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DELINEATION

O F

UNIVERSAL LAW.

M. *Constituendi vero Juris, ab illa summa Lege, capiamus Exordium, quae
Seculis omnibus ante nata est, quam Scripta Lex ulla, aut quibus omnino Civitas con-
stituta.*
CICERO de Legibus, Dial. I.

A. *Non ergo à Praetoris Edicto, ut plerique nunc, neque à Duodecim Tabu-
lis, ut Superiores, sed penitus ex intima Philosophia, hauriendam Juris disciplinam
putas.*
Ibid.

707.d.10.
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DEFINITION

OF

UNIVERSAL LAW.

—A. Non ergo à Frederico Ellisio, ut plerumque nunc, reges à Doctores Iuris
in, et Regentes, sed potius ex iuribus Philosophis, huncce nomen Juri digne
dant.

—M. Compositum est Jure de illis iuribus, qui, ratione leguntur, que
facile certum esse vult, quia scripta Lex illa, que quibus omnino Civitas con-
stituitur.

—Cicero de Legibus, Lib. I.

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A
Delineation of Universal Law:

BEING AN

ABSTRACT

OF

An ESSAY

Towards DEDUCING the

ELEMENTS

OF

UNIVERSAL LAW,

FROM

The First Principles of Knowledge,

AND

The NATURE *of* THINGS;

IN A

METHODICAL and CONNECTED SERIES.

In FIVE BOOKS.

I. OF LAW IN GENERAL.
II. OF PRIVATE LAW.
III. OF CRIMINAL LAW.

IV. Of the Laws of MAGISTRACY.
V. Of the LAW of NATIONS.

By FETTIPLACE BELLERS, Esq.

THE THIRD EDITION.

LONDON: Printed by J. HUDN,.
For R. and J. DODSLEY, in Pall-Mall. MDCCLIV.

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Definition of Universal Law:

ABSTRACT

AN ESSAY

ON THE

UNIVERSAL LAW



THE NATURE OF THINGS

METAPHYSICAL AND CONNECTED SERIES

I. OF LAW IN GENERAL
II. OF PRIVATE LAW
III. OF CRIMINAL LAW

BY J. FETTERIDGE BEELER, ESQ.
THE THIRD EDITION

LONDON: Printed by J. Hudson
For R. and J. DODD, in Pall-mall, MDCCLXXV.

ADVERTISEMENT.

THE Author had been engaged in the great Work, of which this is an Abstract, twenty Years. His Design was to connect the separate Systems of Lawyers and Philosophers, by deducing an intire Body of Laws from Principles of Truth and Knowledge; without leaving Practice wholly out of Sight, nor yet carrying it down to the minuter Reasonings of the Bar, Bench, and Senate, &c. of particular States: But he did not live to finish it. Several Tutors in the Universities, and Persons eminent in the Law, have desired this Abstract might be made public; esteeming it an excellent Plan for Lectures, and an useful Guide both for Students and Proficients in this Science. The curious Reader may meet with further Satisfaction in the Author's Preface.

ADVERTISEMENT

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Necessaries, without leaving Practice wholly out of
yet carrying it down to the minute Reasoning of the
Practitioner, and hence, &c. of particular Cases: But
he is proud to find in General Instruction, and for
four centuries in the Law, have been the distinct
public; showing it an elegant Plan for Learning and
useful Guide both for Students and Practitioners in the Law
The curious Reader may wish to know the Author's
Author's Preface.

THE ADVANCEMENT OF LEARNING

THE P R E F A C E.

THOUGH both *Plato*, among the *Greeks*, and *Cicero*, among the *Romans*, not to mention others, had long before made some very just Attempts towards shewing the Rise of Laws from the Reason and Nature of Things; yet, that accurate Surveyor of the Advances and Extent of Human Knowledge, our own Lord *Bacon*, truly observes*, that those who had, till his Time, treated of Laws, doing it either as Philosophers, had not carried their fine Contemplations near enough to Use and Practice; or as Lawyers only, had not sufficiently freed themselves from the Fetters of positive Institutions.

AND notwithstanding divers Works of great Weight and Learning have since appeared, such as those of *Cochius*, *Selden*, *Comberland*, *Puffendorf*, and *Domat*; yet they have, each of them, their own particular Points so much in view, that the same Observation remains, in great measure, true to this Day.

To supply this Defect, as far as the Author's Abilities will permit, his Design is, according to his Title, to deduce the Elements of an intire Body of Laws from the highest Principles of Truth and Knowledge: Without dropping the Inquiry so short as to leave Practice wholly out of Sight; nor yet carrying it down to those minuter Reasonings and Circumstances which are necessary for the Bar, the Bench, or the Senate, in the actual Administration of Justice and Government, in any particular State.

THE Use of such an Undertaking, if it should be but tolerably well executed, is too obvious to need much Explanation.

SUCH Readers as have no Inclination to meddle with the Intricacies of actual Law, but would, however, be glad of a rational View of Human Society, in all

its

* *Advancement of Learning*, Book VIII. chap. 3.

its Parts, will here find it in a much more extensive Manner, than is to be seen in any one Writer; and in a more concise, as well as more connected one, than it can be found in, among many: As will, 'tis apprehended, be obvious even to Persons slightly versed in these Subjects, if the Plan of it, here offered, be considered with a little Attention.

THE beginning Student, before he plunges into the irregular Mazes of positive Institution, may be previously, and at once, furnished, in due Order and Connection, with the Reasons on which an intire Body of Laws depend in general. A Clue, which is not a little necessary to all those, who are obliged to travel thro' such wide and intricate Labyrinths, as the particular Laws of all long civilized Nations ever have, and always must swell to.

GENTLEMEN, whose Condition of Life and Fortunes call them early to a Share in the Legislature of their Country, to whom a just System of such general Truths is more necessary than the Subtleties of Practice, may be thereby prepared to judge much more readily, concerning those various and opposite Reasonings which are usually offered in such Debates, as attend the carrying all particular Laws, from Theory, into Institution and Act.

AND though the great Masters of Jurisprudence should, discern, more with new Truths, yet 'tis possible that the Manner in which the Author deduces the old ones from their first Principles, and the Order in which he disposes them when so deduced, may not be unpleasing. For he flatters himself, they will make some Allowance for an Undertaking, which is, in great measure, the first of the Kind; especially if they consider how difficult it is to make one and the same Performance useful to such, as the Writer may be capable of instructing; and, at the same time, not disagreeable to those, who are able to instruct him.

BESIDES which merely civil Purposes, as the first Book, on which the rest are built, shews how evidently the Doctrines of *Natural Religion*, *Private Morality*, and *Public Law*, are derived from the same Sources, and tend directly to the same great Purposes; that Part of it in particular, may not be useless: especially at a Time when divers Sorts of Enthusiasm seem to make some such Considerations necessary.

THOUGH 'tis possible some of his Readers may look on such Discourses, as Part of the first Book will consist of, as Things too remote for an Introduction to the Elements of Law. But, besides observing that those will be very short, he who aims at offering an intire Body of Doctrine to the Public, ought to consider himself as speaking to the most inquisitive and extensive Capacities, who will not be fully satisfied with any thing less than the highest Reasonings, which the Subject they are considering seems to admit of.

Or, if Precedent be necessary in the Case, he is therein justified by the Manner in which that great Lawyer, *Cicero* himself, enters on the Consideration of this Subject. Though, if the Reader should compare the two Discourses, 'tis hoped he will find that the accumulated Thought of so many Ages has enabled the Author, to carry those Views something farther than that learned *Roman* had an Opportunity of doing; or than some others, since his Time, have done.

CARE is taken to render the Style plain and concise, without aiming at Ornament. Language, when applied to these graver Purposes, seeming to be most properly dressed in that simple Neatness which becomes a prudent Matron, when she is employed in domestic Affairs at Home.

MANY Terms of Art are thrown into Circumlocutions; that is, partly into their Definitions; lest the technical Meaning they have acquired, in the particular Laws to which they belong, should not be, precisely, that in which they must be used, in such a general Discourse as the present.

In which, however, 'twas hardly possible to avoid some little Novelty of Expression; though that will no where be introduced without sufficient Explanation. Of which Sort are, *the Laws of Private Civil Dominion and Subjection*; for what the Civilians call *Private Law*, and which, according to *English Phraseology*, we may call *the Laws of Private Liberty, Power, and Property*: *The Laws of Public Subjection*; for what they call *Criminal Law*, and we *Pleas of the Crown*: *The Laws of Feccial Magistracy*; for a Part of Public Law, for which neither our own, nor the *Roman* Writers furnish us with any distinct Term; for I need not observe, that *Jus Fecciale* is, with them, what we call *the Law of Nations* itself; and not that Part of their Civil Laws which vested the Officers who made Leagues, &c. with the Office and Power of so doing.

AND though these, and divers others, may at first View seem a little unusually yet it is hoped, that, on a second Reading, they will appear to arise naturally, and without any Affectation, from the Cast and Turn of the whole Discourse: and to be, therefore, the properest Expressions in the several Places where they are used.

THOUGH, not only with respect to Language, but to more material Points, one great Use of publishing so large a View of the Undertaking, as the present, was to have the Opportunity of giving the Work itself, before it goes to the Press, such Improvements as might be suggested by the Judicious, to which the Writer will lend a ready Attention: For, how bold soever the Attempt may seem, he is far from thinking himself too knowing to be informed, or his Performance too perfect to be corrected.

ITS Margins will not be loaden with Quotations, which, in a Discourse that professedly appeals to the Nature of Things for its Authority, would be foreign to the

the Purpose ; except here and there, perhaps, to free a seemingly uncommon Sentiment, from the Imputation of being altogether a Novelty.

Nor, in the opposite Extreme, will he run into formal Disputes ; except on some very remarkable Occasions. His Business is not to pull down, but to build up, a System of Truths, on these Subjects, in as concise a Manner as their Extent and his Abilities will permit ; without going out of his Way to combat celebrated Names, or received Opinions.

For otherwise, what between Quotation and Refutation, each Part of this Discourse might be readily swelled beyond that Bulk which is designed for the Whole ; and that with much greater Ease to the Performer. Where he might also observe, that it will be more for the Student's Advantage to find the Author's Reading and Judgment, if he has any, in the Texture of that Whole, than in such splendid Patches, which might cover, but would not cure, Flaws in the main Substance itself.

BUT to make ample Amends for those Omissions, if they are to be thought such in a Body of Elements only, References will be made, in every Part, to such Books, or Parts of Books, as are celebrated for handling those Subjects more at large ; so as to make the Whole a methodical Index to such Writers thereon as have fallen under the Author's View : By which the Reader may, at his Pleasure, readily fall into a larger Thread of Reasoning, on its several Heads, than by the Nature and Design of the Work itself, is, at first, intended to be laid before him : The principal Purpose of it being, to make him, in some Degree, Master of the Out-lines, before he meddles with those minuter Particulars of Law, and Government : as the most certain Method of becoming afterwards a just Master of those also.

For the rest, the following View of the Whole will be his best Expofitor : with Respect to which, in particular, he begs the Reader's Patience while he observes, that the little Introductions that stand therein at the Head of each Book, and of the Parts into which those Books are divided, are not to be considered as the Discourses which will appear in those Places of the Work itself, but as little Abstracts of them, occasionally drawn up, for the better connecting the Parts of this View.

It is also to be observed, that the several Sections under those Parts have, in the Book itself, their particular Introductions, and are also farther subdivided, according as they are more or less full of Matter ; which those who are already well acquainted with Laws will easily see, is very various.

THOSE lesser Introductions and Subdivisions are, however, here omitted, because inserting them would have rendered the View too unequal and bulky, for one of its principal Purposes ; which, without incumbering them with too minute a Detail

P R E F A C E.

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tail of Particulars, was to give the Learned in those Subjects an Opportunity of judging, whether the Author's Plan might be capable of bearing, with sufficient Order and Clearness, that extensive Weight of Reasoning which he has attempted to lay on it; to which if it should appear not unequal in general, there would be the less Reason to suspect his Performance in particular Parts, wherein it must be easier to succeed: Or though he should fail in some of them, as 'tis not to be expected but he may, yet such a Work might not want its Merit upon the Whole.

FAULTLESS Performances, even on the slightest Subjects, are not very common; much less is it to be expected, that one Man's Life and Understanding should reach Perfection on Subjects, whose Extent and Difficulty have employed the ablest Heads of so many Ages, and so many Nations.

HOWEVER, as he has really applied a great Part of Twenty Years, to such Studies and Collections as might enable him to finish it, with some Benefit to his Readers, and some Reputation to himself, he doubts not but they will excuse him, if he flatters himself, that neither of his Aims will be wholly frustrated, in its Publication.

WORKS of this Kind often fall to the Share of the more speculative and indolent Tempers; because greater Capacity and Application always have called, and always will call, those of more Ability farther into the Scenes of active Life, than leaves them Leisure to undertake what they had been, otherwise, the most capable of performing; and of which, therefore, when performed, they must be, in general, the ablest, if not the only, Judges.

AND as the World is, already, but too full of useless Books, the Author thinks it an advantageous Circumstance, both for his Readers at large, and himself, that his Cause must be tried before that highest Judicature: Where, as the Sentence is final, so 'tis sure not to be pronounced without due Consideration.

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BOOK

BOOK I.
ELEMENTS
OF
LAW, in GENERAL;
BEING A
DISCOURSE
OF THE
ORIGIN, ENDS, and FITNESS of all Laws.

BOOK I
ELEMENTS
OF
LAW, IN GENERAL;
AND
DISCOURSES
ON THE
PRINCIPLES AND HISTORY OF THE
LAW.

INTRODUCTION.

 All Just Laws are Rules of Action, prescribed to intelligent Agents, by fit Persons, under fit Penalties, as fit Means, for obtaining some fit End; our Inquiry into their Reasons must begin, from an Examination of the Fitness of the *Ends* aimed at by them.

FOR though the Legislator may be fit to prescribe Rules of Action; though the Penalty may be fit to produce a Compliance with the Rule; and the Rule, when complied with, may be fit to produce the End; yet if that End itself be not fit to be obtained, the Law fails in its principal Point.

WHENCE it follows, that 'till the Ends at which Man should aim, in general, be known, we cannot judge of the Fitness of any particular Law that may be prescribed to him; for, notwithstanding the seeming Fitness of any particular End, it may, 'till Man's general End be known, be inconsistent therewith.

NOR can that general End be discovered without a thorough Consideration of the Human Nature, in all the Circumstances of its Existence; as far as they are discoverable to us by Reason only.

B

FOR,

FOR, as we are about to deduce the Fitness of Laws from the general Nature of Things, we are not to use other Mediums of Argument, than those which rise from that general Nature: And, in order to make our intended Discovery thereby, we will consider Man, the Causes of his Existence, his discoverable Ends, and the Laws of his Nature, under the following Heads, in the several subsequent

P A R T S O F T H I S B O O K.

- I. OF Mankind, and the visible System of Things, of which they are a Part, absolutely considered.
- II. OF the Being of some one First and Universal Cause of all that System, as it follows from the Nature and Structure thereof.
- III. OF the Nature of that First Universal Cause, as it follows from the Nature of the Things produced.
- IV. OF the designed Ends of Man, as they follow from the Nature of that Cause, &c. in general.
- V. OF the Laws prescribed to Man, by that Cause, for obtaining those Ends; and their Fitness in general.
- VI. OF the Physical Laws of the Human Existence, and Nature; and their Fitness for those Ends.
- VII. OF the Moral Laws of the Human Nature; and their Fitness in general.
- VIII. OF the Laws of Sole Morality; and their Fitness.
- IX. OF the Laws of Social Morality, or Human Society; and their Fitness in general.
- X. OF the Laws of Private Society; and their Fitness.
- XI. OF the Laws of Public, or Civil Society; and their Fitness in general.
- XII. OF the Laws of National Society; and their Fitness.
- XIII. OF the future Immortal Existence of Man, as it necessarily follows from all the preceding Thread of Reasoning; and as its Moral Nature and Laws are thereby, *in Part*, discoverable.

P A R T

BOOK I. ELEMENTS OF LAW IN GENERAL.

PART I.

OF MAN and the VISIBLE SYSTEM of Things of which he is a Part, *absolutely considered.*

THE preceding Titles, of the several Parts of this first Book, having acquainted the Reader with its wide Extent; he will not think it improper that, in this first Part of it, we bring him to a Point of View, whence, as from an Eminence, he may take a distant, general Survey of that vast Object, into whose Causes and Effects he is to enquire more minutely, in the following Parts: Which however will be drawn into the Compass of very few Pages, under the following

SECTIONS.

- I. Of Human Understanding, not only as it is Part of our Subject, but especially, as it is the Instrument with which the whole Inquiry must be made.
- II. Of Human Knowledge, both Physical and Moral, as it is the Result of that Understanding, in general.
- III. Of Mankind, with the rest of the Inhabitants, and Furniture of this Globe of Earth.
- IV. Of this Globe of Earth, and the rest of the solar system, of which it is a Part.
- V. Of the rest of the visible Universe, of which that solar System is a Part.

PART II.

Of the Being of some ONE, *First*, and UNIVERSAL Cause of all Things.

THE preceding View having justly and necessarily put the Mind on an Inquiry into that Series of Causes and Effects, on which this prodigious System of Things is dependent, we come in this Part to trace, in a short manner, the great Out-lines of that Series, Step by Step, till they result in a full Proof of the Being of some one Universal Cause.

WHERE however the Reader is not to suppose, that in this Part, and the next immediately following, any thing so absurd is thought of, as swelling this Introduction to Elements of Law, with a whole System of Physicks: But stating the Cardinal Points of that System in such a concise, and in some degree, new Manner, as will conclude fully to our Purpose; referring the Reader to Places where those Particulars may be seen at large, which will be here treated in general Terms only, in the following

S E C T I O N S.

- I. Of the Generation, Birth, Growth, Life and Death of the various Inhabitants of this Earth, both vegetable and animal, as they depend on their several mechanick Structures, in particular, and the apparent Qualities of what we call Body or Matter, in general.
- II. Of the Structure, Motion, &c. of our Globe of Earth, as it depends on the Nature of Matter internally, and its Place in the solar System externally.
- III. Of the Structure of that whole solar System, as it depends on certain universal Qualities internally, and on its Situation in, and being a Part of the visible Universe externally.
- IV. Of the Structure and Nature of the visible Universe, as it evidently infers both the being of infinitely more than its visible Parts, and the Existence of some one Universal and Infinite Cause.

P A R T III.

Of the NATURE of the *First* and *Universal* CAUSE.

THE Being of such a Cause thus prov'd, not from metaphysical Speculations, but Proofs of the clearest and strongest Kind that the human Mind is capable of, we come in another Thread of Reasoning, to inquire into and prove the Nature of that Cause, as it follows, with equal Cogency, from various Mediums of Argument, in the following

S E C T I O N S.

- I. Of the infinite physical Power (if we may be allow'd that Expression) of the First Universal Cause, as it follows from an evidently indefinite, if not actually infinite, physical Universe.
- II. Of the intelligent Nature of that Cause; as it follows from the mechanick Structure of that Universe.
- III. Of the moral Nature of that Cause, as it follows a priori, from his intelligent Nature, and a posteriori, from the moral Nature of the Things produced.
- IV. Of divers other particular Attributes of the First Cause, as they follow from, and depend, as to our Knowledge of them, on the former.
- V. Of the Ends for which such an infinite, moral Agent must act in general, as they follow
 1. A priori, from his demonstrated moral Nature.
 2. And are confirm'd by the moral Ends discoverable in his Works, in the subsequent Discourses.
- N. B. Where we talk of any thing, as a necessary Consequence of the Divine Nature, the Reader is not to understand a physical, but moral Necessity; as it arises from the voluntary, tho' infallible Rectitude of that Nature.

PART IV.

Of the *Designed* ENDS of *Human Existence*.

THE Ends of Divine Action thus discovered, in general Terms; this Part is designed for an Inquiry into the Ends of Man's Existence more particularly: which will be done in the following

S E C T I O N S.

- I. Of the metaphorical, or indistinct Manner in which divers Writers talk concerning the Summum Bonum; and the Manner in which this Inquiry must be made.
- II. Of the Ends of Human Existence in general, as they follow.
 1. From the beneficent and just Nature of the First Cause.
 2. From his Power and Wisdom, capable of executing all that his moral Nature dictates.
- III. Of the Ends of Man's present Life, as they follow.
 1. From the System of Things of which he is a Part.
 2. From the Powers and Faculties given him to obtain those Ends, in Conformity to that System.
- VI. Of the Future, and necessarily immortal Existence of Man, or the Human Mind; as it follows.
 1. From the moral Nature and Power of the First Cause.
 2. And is confirmed by the Circumstances of our present Life in the following Parts.
- V. Of the Means given to Man for obtaining those Ends, in general Terms.

PART V.

Of the LAWS, prescribed to MANKIND, by the FIRST CAUSE.

HAVING, thus, traced Mankind up to their Origin, and, thence, discovered the Ends of their Existence, with a general Sketch of the Means given for obtaining those Ends, we now evidently see human Creatures, in the Light of Agents, acting under an infinitely powerful and wise Creator, to Purposes vastly superior to, and more extensive than, those narrow Views, which their Senses seem at first to suggest.

To which Deductions, however, tho' made, in a greater or less Degree, by the Body of Mankind in all Ages, many Objections have been started, by Names of some Note in the Philosophical World: chiefly drawn from the moral Nature of Things, as not answering to those Conclusions.

BUT a little farther Reflection will also shew us, that *Omnipotent Creator*, in the Light of a most perfectly beneficent, and just *Legislator*. In which we come, directly,

directly, to the principal Purpose of this first Book; that is, to examine the Fitness of all Laws, by the Fitness of the *Ends* to which they are directed.

WHERE, while we place all just human Laws, on the solidest Foundations on which they can stand, the Purposes of *Infinite Wisdom and Goodness*, we shall, at the same time, put the finishing Hand to demonstrating the Truths hitherto laid down; by shewing, that both the *physical*, and *moral* System of Things are perfectly right and fit, for the Purposes design'd; and therefore, necessarily, the Work of such a Cause, as we have before attributed them to.

AND here, as a Thread of Reasoning that is, in part, *new*, will be offered; so it will be done with that Modesty, which becomes a Man very sensible of the scanty Reach of human Knowledge, in *general*; and the yet narrower Compass of *his own*, in particular. Tho' not without a firm Persuasion, that Time will carry Discourses of this Kind to much greater Perfection, especially as to the minuter Circumstances, than can be here attempted, where we have Room for the Outlines of those Reasonings only: which will be considered in general, in the subsequent

S E C T I O N S.

- I. *Of the Nature and Idea of a Law, in general.*
- II. *Of the false, or imperfect Views of the Laws of the human Nature, given by divers Writers, in Discourses on, what they call, the Laws of Nature.*
- III. *Of those Circumstances of human Existence, and Knowledge, which point out to Man, his several Ends of Action, under various Penalties; and that they are, in the properest Sense, the Laws of his Nature.*
- IV. *Of a physical Law, its Nature, Idea, and Fitness in general.*
- V. *Of a moral Law, its Nature, Idea, and Fitness in general.*
- VI. *Of the Necessity for, and Fitness of, a proper Mixture of both these; for conducting Man to his design'd Ends, in general.*

P A R T VI.

Of the PHYSICAL Laws of the HUMAN NATURE, and their *Fitness*.

THE Laws under which Man acts, in general, thus considered, we come to a more particular Examination of the *Physical* Part of them; which, (tho' they are, to Mankind, in a Sort, unconditional and absolute) will, on a just Inquiry, be found to be so many moral Acts of the First Cause, for the fittest Purposes.

IN the second Part of this Book, the admirable Structure of Things was considered, as they prov'd the exquisite Intelligence only, of the Architect: but here, viewed in another Manner, they will shew us, that *fine Artist*, in the Light of a most perfect *moral Agent*; in exact Conformity to what was, antecedently, proved from his Intelligence alone: which will be the Business of the following

S E C T I O N S.

SECTIONS.

- I. *Of the Fitness of the Structure of the human Mind, and Understanding, so far as it Exists and Acts by Laws wholly independent of human Will and Action; and of the Degrees of Necessity under which Man acts, in that respect.*
- II. *Of the Fitness of the established physical Laws of, what we call, Body or Matter, in general, for the moral Purposes to which they are design'd; and the Degrees of Necessity under which Man acts in those respects, as well in the Structure of his own Body, as that of other Things.*
- III. *Of the moral Fitness of several of the most considerable physical Circumstances under which Man Exists and Acts; in the Points of his Generation, Birth, Life, Health, Sickness, and Death.*
- IV. *Of the Fitness of the physical Structure, of this Globe of Earth; of the solar System; and the visible Universe; for the moral Purposes to which they are evidently design'd.*

PART VII.

Of the MORAL Laws of the HUMAN NATURE, and their Fitness, in general.

THE Fitness of that absolute Government which is exercis'd over Man, by the physical Nature of Things, as they are in reality so many direct Laws, or Acts, of the First Cause, thus explain'd; we proceed to examine, those moral Rules of Action, to which he is subjected, by the Mediation of his own Understanding and Will.

WHERE 'tis to be observ'd, that as the former were the Instances of those Kinds, and Degrees of Necessity under which Men act; these are the Points in which they are, in various Ways and Degrees, free Agents, to the Purposes of their own Happiness, in Conformity to the absolute Nature of Things, or that of other free Agents: which we shall consider, in general, in the following

SECTIONS.

- I. *Of the Instances, and Degrees, in which Mankind are subject to the Consequences of their own Actions, in general: which Consequences are inflicted, either immediately, by the physical Nature of Things; or mediately, by the Intervention of moral Agents.*
- II. *Of that Degree of Liberty, and Power, which the physical Nature of Things gives, or leaves to Man: in which Instances, those physical Laws become so many moral Rules of Action to Mankind; under their various Penalties.*
- III. *Of the Reasons for, and Fitness of, subjecting Mankind to the Consequences of their own Actions; in conformity to an established Order of Things: without the Intervention of other free, or moral Agents.*
- IV. *Of the Reasons for, and Fitness of, subjecting Mankind to the Action, and Intervention, of those moral Agents, which are their Fellow Creatures, in general.*

PART

PART VIII.

Of the *Laws* of SOLE MORALITY, and their *Fitness*.

AFTER the foregoing Inquiry concerning the Fitness, and Use, of those Circumstances of Man's Existence, which subject him to the Consequences of his own Agency, in general: we proceed to a more particular Examination of that Part of them, whereby each Individual is dependent on his own Actions, in particular; in the following

S E C T I O N S.

- I. Of the several Points, and Degrees, in which the Individuals of the human Species are dependent on their own immediate Actions.
- II. Of the Government, and Improvement, of the Understanding; as it is made necessary to Man, and depends on his own Action; under various Penalties.
- III. Of the Government, and Care, of the Body; as each Individual stands thereto oblig'd: and the Penalties attending its Neglect, or Abuse.
- IV. Of the Use, Bounds, and Fitness, of the Passions, for both those Purposes: and the Penalties attendant on their Misuse.
- V. Of the due Provision of external Means, for all those Purposes: as each Individual stands thereto oblig'd, under other Penalties.
- IV. Of the particular Reason for, and moral Fitness of, this Part of the Laws under which the Individuals of Mankind are, in great measure, dependent on their own Actions, consider'd as the Appointment of the First Cause, for the Purposes of Man's present and future Existence.

PART IX.

Of the *Laws* of SOCIAL MORALITY, or HUMAN SOCIETY, in general, and their *Fitness*.

HAVING seen how the Nature of Things compel the Individuals of Humankind to a Care of themselves solely consider'd; we proceed to examine how they stand oblig'd to a social Life with each other; partly under the same, and partly under another Set of Penalties; which will be consider'd, in general, in the subsequent

S E C T I O N S.

- I. Of the several Circumstances and Wants of Mankind, which, as so many Laws, make a social Life necessary to Man; under their various Penalties.
- II. Of the Kinds and Degrees of Similitude which run through the whole Species, and bind them to the general Law of Society; and of the Kinds and Degrees of Dissimilitude,

similitude, which fit the Individuals, respectively, for sustaining the different Offices of it.

- III. Of the several Degrees, and Kinds, of Society, to which Men stand oblig'd thereby, both private and publick; under their various Penalties.
- IV. Of the Use and Fitness of the social Passions, for those Purposes; and the Penalties that attend their Misuse or Abuse, in general.
- V. Of the moral Fitness and Use of these Circumstances of the human Nature in general; which subject Mankind to, and make them dependent on, each others Actions mutually, in various Ways; considered as the Design, or Appointment of the First Cause.

PART X.

Of the Laws of PRIVATE Society, and their Fitness.

FROM considering the Laws of human Society, in general, we proceed to state and examine, more particularly, that *private Society*, which the Individuals of Mankind are, by the Nature of Things, obliged to cultivate with each other; under the Direction of the *private Understanding*, and the Guard of the *private Force* or Powers of those Individuals respectively; where their several Wills are so many *private human Laws*, to the Observance of which Men stand oblig'd, under the Rewards and Penalties of *private Friendship* and *Resentment*, of various Sorts; so far as those are permitted, by that *publick Society*, and those *publick Laws*, which will be considered in the next Part of this Book.

AND here it may not be amiss to observe, that this *private social Life*, seems to be that, which some Writers, emphatically, call the *State of Nature*: And from whence, as if it were the only State natural to Man, they attempt to deduce that imperfect, and in divers Points erroneous, Body of Rules, which they call, *the Laws of Nature*.

WHICH Error, and its Consequences, will be refuted by the whole Thread of this first Book, as it will thereby appear, that the Laws of the human Nature cannot be, justly, stated, but from the *whole Progress* of that Nature; and not from any *particular State*, or Part of it. But to return to our present Point, this *private Society* and its Laws, which are, indeed in part, the most immediate Objects of *publick Society*, will be here considered in the following

SECTIONS.

- I. Of the several Circumstances which, as so many Laws, compel Men to a private social Life with each other; under their various Rewards, and Penalties, in general.
- II. Of the Difference of the Sexes, with the Connubial Society thereon founded, and its Laws; under divers Penalties.
- III. Of the Parental Society, as it arises from the Connubial, and its Laws; under their particular Penalties.

C

IV. Of

- IV. Of the Herile Society, between Master and Servant; as it is founded on different Talents of Body and Mind, internally; and other Circumstances, externally with its arising Laws, under various Penalties.
- V. Of that universal private Society to which all Men are held, as Inhabitants and Cultivators of the Earth; as well for raising as enjoying the Necessaries of Life; with its Laws, as they are the Foundations of Property, in general, and all Kinds of private Commerce in particular, under a Variety of Penalties.
- VI. Of divers of the more indeterminate Parts or Offices of private Society, for the occasional Purposes of human Life; where of general Beneficence, and particular Friendships; with their Necessity, and Laws; under their several Penalties.
- VII. Of the Means by which the Individuals of the whole Species are distinctly determined to these private social Acts, towards each other, in particular; for which they are form'd in general. Where, of Signs, or Language, and Veracity therein, in general, with Promises and Contracts, &c. in particular; and their various Laws.
- VIII. Of the Precedence and Order of the Obligations arising from these different Offices of private Life, where, by accident, they come in Competition with each other: and the Penalties attending on Breaches of that Order.
- IX. Of the Fitness of the social Passions, both concupiscible and irascible, as they are partly the Spurs to, and partly the Guards and Enforcement of, private Society, in all its Parts; with their Use and Bounds, under various private Penalties, that attend their Defects, Perversion, or Excess.
- X. Of the moral Fitness of all these Parts of private Society in particular; considered as the Institution and Appointment of the First Cause; for the present, as well as future Purposes of human Existence.

PART XI.

Of the Laws of PUBLICK or CIVIL SOCIETY, and their Fitness.

FROM the Defect, or Excess, which attends the unlimited Use of Mens private Understandings, Powers, and Passions, in the Exercise of that *private Society*, which we come last from considering; Mankind are invited by many Benefits, on one hand, and compell'd by many Penalties, on the other, that is, by so many *Laws* of their Nature, to submit to the Guide of a *publick Understanding*; and seek the Protection of a *common Force*, in many Points, that are the common Concern of all: Which is acting in that *Publick or Civil Society*, which we come now to consider.

WITH respect to which 'tis also to be observed, that the same Nature of Things, that induces them to do so ingeneral, under one Set of Penalties, does not forsake them there; but obliges them to the Observation of a great Variety of Rules, in so doing; under another Series of Conveniencies and Inconveniencies, which follow in various Kinds and Degrees, according as those Societies, and the human Laws that regulate them, are more or less conform'd to the Nature of the Things they regulate;

BOOK I. ELEMENTS OF LAW IN GENERAL.

III

regulate; the doing of which, in every Point, is the great Business of Legislation, as we shall see in every Part of human Laws, when we come to consider them.

Tho' at the same time, it may be asserted, as an universal Truth, that the worst System of Civil Society that ever was instituted, was attended with fewer Evils, than the intire Disuse of it would have been. So exactly do the *Divine Laws* of Man's Nature exert themselves, in Proportion to his Compliance with, or Deviation from, them: The Examination of all which, in general Terms only, will be the Business of the following

SECTIONS

- I. Of those Circumstances of human Life, which, as so many Laws, make it necessary to Mankind to use the Direction of a Publick Understanding, and seek the Protection, or submit to the Controul of a common Force, in general.
- II. Of the Right thence arising, to Mankind on one hand, and the Obligation they are under, on the other, to all in such Society; antecedent to any particular Compact; in answer to those, who found all Civil Society, on human Compact only.
- III. Of Publick Human, or Civil, Laws, under immediate Human Penalties, or thence resulting; their Nature, Objects, Parts, Kinds, and Fitness, in general.
- IV. Of those Parts of Private human Society, in which Mens Private Dominion over their own Persons, the Persons or Actions of others, and over other Things, is to be defended by publick Civil Laws; though under no other Penalties than those of private Reparation to the Persons injured: Whence arise what I, therefore, call the LAWS OF PRIVATE CIVIL DOMINION and SUBJECTION: usually called PRIVATE LAW, though improperly, because all Civil Laws are publick; which Parts of Law, their Kinds, Reasons, and Fitness will be considered In General, in this Section;
In Particular in Book II.
- V. Of those Parts of Human Life and Action, which ought to be directly regulated by, or subject to, the publick Understanding; under publick Penalties on the Offender, because those Offences affect the whole Society: Whence arise what I, therefore, call the LAWS OF PUBLICK CIVIL SUBJECTION; usually called CRIMINAL LAW: of which, its Objects, Kinds, Reasons, and Fitness,
In General, in this Section;
In Particular, in Book III.
- VI. Of those Rules, which are necessary to constitute the Being, and direct the Action, of that publick Understanding and common Force, which must give Birth to, and execute, the two preceding Bodies of Law: Whence arise what I, therefore, call the LAWS OF PUBLICK CIVIL DOMINION, or MAGISTRACY, in all its Parts both Subordinate, and Supreme: Of which, their Objects, Kinds, Reasons, and Fitness,
In General, in this Section;
In Particular, in Book IV.
- VII. Of the moral Fitness of this Part of the Order of things (which subjects Men, in this manner, mutually to each others Actions in Civil Society,) considered as the Appointment and Institution of the First Cause; for the Purposes of Man's present and future Existence.

PART XII.

Of the *Laws* of NATIONAL SOCIETY, and their *Fitness*.

AMONG the Circumstances, and Nature, of Things, which give Being to Civil Society, we have before observed, that no one publick human Understanding, or common Force, can exert itself beyond certain Bounds, without various Imperfections and Inconveniencies; which, as so many Laws, oblige Mankind to resolve themselves into many such Societies.

WHILE, on the other hand, the Nature of human Life on this Earth, makes a Communication between those Societies, or their Members, in some Cases unavoidable; in many, very necessary; and in most, very convenient: Which mutual Inter-course, however, cannot, any more than that between Individuals of the same Society, be maintained, as it ought, without its particular Rules; whence arise, what I therefore call, the *LAWs* of NATIONAL SOCIETY; usually call'd the *LAW* of NATIONS; whose Nature, Objects, Parts, and Fitness, will be considered

More Particularly, in Book V.

More Generally, in the following

S E C T I O N S.

- I. Of those Circumstances, in the Nature of Things, which set Bounds to all particular Civil Societies, on which the Being of many such depend; with the Penalties that attend on their extending themselves beyond proper Limits.
- II. Of those Circumstances of human Life which hold all such Societies, or their Members, to a mutual Inter-course with each other, in a greater or less degree, under various Penalties; with their arising Rules and Duties; which are the *Laws* of Peace between them.
- III. Of those Facts and Circumstances, which compel such Societies to hold each other, or, their constituent Members, to those *Laws* and Duties of Peace, by direct Force and Compulsion: with the Rules by which that must be done; which are the *Laws* of War between them.
- IV. Of the Fitness of this Part of the Nature and Circumstances of human Life (which subject different Multitudes of Mankind to the Guide of different publick Understandings, and at the same time hold them to their mutual Duties by the *Laws* we come from examining;) consider'd as an Appointment of the First Cause, for its general and particular Purposes.

PART

PART XIII.

Of the FUTURE and IMMORTAL *Existence* of Man, or the HUMAN MIND, with its arising *Laws*.

HAVING, thus, gone through, and examined the Nature, and Laws of human Existence; so far as we perceive it by actual *Fact* and *Experience*: We come now to advance our Inquiries concerning it, into that *Futurity*, for which we have, antecedently, shewn that Man must be design'd, by the *First Cause*.

WHERE we have *three* Parts to execute: The first of which is, to carry the Argument for Man's future Existence, which was drawn *a priori*, from the *abstract* Idea of the *First Cause*, into a full Demonstration of the Certainty of that Existence, as one of the Laws of his Nature in general, by Proofs *a posteriori* from the Nature of his present Existence. The next is, to examine how far another Thread of Reasoning will carry us, clearly, as to the *Nature* and *Laws*, of that future Existence, in particular. And lastly, we are to consider, what Effect that Discovery has, or ought to have, on Man's *present* Life and Actions, according as those two Parts of his Existence stand related to each other.

HENCE, indeed, *actual Sensation* and *Experience* do, in part, forsake us; but as sure, and perhaps a more accurate Guide, will take their Places. For as those *abstract* Reasonings of the Geometers, concerning Things which fall not under the Senses, (such as the demonstrated Properties of a true *Circle*, or a true *Cone*, neither of which were, perhaps, ever seen) are more clear and exact, than any Mensuration or Operation, that can be *actually* and *mechanically* performed about those Figures: So, tho' the Conclusions to be drawn in this Part, are not the Consequences of any particular Facts, Sensations, or Experience, they are, however, the Result of all the Facts, all the Sensations, and all the Experience, that ever were, or ever will be.

THAT is, they are nothing less than the full Result of the *whole Nature* of Things, collectively consider'd in one Body: And will therefore appear to have an *Evidence*, as infinite, as that Nature, in its *Extent*; as unsurmountable, in its *Force*; as uniform and invariable, in its *Tenor*; and as lasting, in its *Duration*. But as this is, in some Sort, asserting before Proof, it had, perhaps, been better said, after we had gone through, with allow'd Success, what will be the Business of the following

S E C T I O N S.

BOOK

- I. Of the Coincidence and common Tendency of all the preceding Reasonings, as they do, when taken together, amount to full Demonstration, and a future immortal Existence is one of the Laws of the human Nature.
- II. That such future Existence must be the Result of a certain established Order of Things, independent of human Action; as to its absolute Nature, in general, just as the absolute physical Laws of Man's Existence here are so.

III.

- III. *Of the Impossibility of discovering what, we (for want of a better Term) must call the Physical Mode and Laws of that Existence, in general; though, with particular negative Proof, that it cannot be, locally, in any of the Scenes of this visible Universe, as they are such.*
- IV. *Of some Parts of the moral, or relative Nature and Circumstances of that future Existence, as they follow most evidently, from various Mediums of Argument.*
- V. *Of the Reasons for, and Fitness of, divers of the Circumstances of human Life and Existence here, which could not be so fully shewn, till our Reasonings were brought to this Point; but which will, now, appear in such a Manner, as to throw new Light and Evidence on the whole Doctrine.*
- VI. *Of the Consequences of these Discoveries, with respect to the present Part of human Life; and the Laws of Action thence arising. Where we shall find Mankind standing, directly, in those Relations (with respect to that Being, which we have, hitherto, call'd, the First Cause) that are usually understood to arise between a rational Creature and his GOD; according to the more general Acceptation of that Term.*
- VII. *Of the Necessity for, and Fitness of, this Part of the Order of Things; which, with respect to Mankind, taken in general, discovers the Nature and Laws of their Existence; to Individuals in various Degrees, according as their Understandings are more or less apply'd to those Purposes; and to the whole Species, by the traditional and accumulated Reasonings of the successive Generations, which consist of those Individuals: whence that Law of their Nature arises, which relates to those Discoveries, under various Penalties.*
- VIII. *Of that Body of Doctrine, in Theory; and Duties in Practice, which is, therefore, call'd NATURAL RELIGION; as it is the full and evident Result of all the preceding Thread of Reasonings; and contains the whole Code of Laws under which Man acts, both to the Purposes of his present and future Existence; so far as they are discoverable by Reason only.*

With a short Sketch of which, this Book must necessarily be closed; as it is that Body of Doctrine, to which only, as common to all Mankind, we can properly refer, in Points where Religion is to be considered, in those subsequent *Elements of Universal Law*, which are designed to relate, equally, to all Nations.

BOOK II.
ELEMENTS
OF THE
LAWS
OF
PRIVATE CIVIL DOMINION
AND
SUBJECTION;
Commonly called
PRIVATE LAW.

Q. Alto vero, & ut oportet, a capite, frater, repetis quod querimus; & qui aliter jus civile tradunt, non tam Justitie, quam litigandi tradunt vias. M. Non ita est, Quinte, ac potius Ignoratio Juris litigiosa est, quam Scientia. Sed hæc posterius; nunc Juris Principia videamus.

Cicero de Legibus, Dial. I.

THE
BOOK II
ELEMENTS

OF THE

LAW

PRIVATE CIVIL DOMINION

AND

SUBJECTION;

Commonly called

PRIVATE LAW.

Of the laws of the United States, as they relate to the rights of private persons, and the duties of private citizens, in the several States, Territories, and foreign countries, and the rights and duties of the United States, as a nation, in its relations to other nations, and to the world at large. By J. W. Alderson, Esq., Barrister at Law, and one of the Judges of the High Court of Chancery in England. Translated from the original, by J. W. Alderson, Esq., Barrister at Law, and one of the Judges of the High Court of Chancery in England. London: Printed by J. W. Alderson, Esq., Barrister at Law, and one of the Judges of the High Court of Chancery in England. 1821.

INTRODUCTION.

HAVING, in the preceding Book, seen that the *Purposes* of Human Life, as instituted by its *Author*, in all its Circumstances, are to fashion Men for, and habituate them to *Self-government*, and *social Action*: And it being, also, there shewn, that one of the Means proper for that Purpose, was to make it necessary for them to act, in many Points, with an *united Force*, under the Direction of a common or *publick Understanding*; we have thence deduced, and stated, the Nature, and Laws of *Civil Society*, in all its principal Parts, in *general Terms* only; referring the minuter Consideration of the Rules, necessary for their Government therein, respectively, to the subsequent Parts of this Work.

ON which *minuter* Consideration we are now entering, and shall begin it, with an Enquiry into the Fitness of the Laws of that Part of Civil Life, in which the common or publick Understanding (leaving each private Individual to the free Exercise of *his own* particular Capacities and Powers) is only active, in directing the *publick Force* to their Defence, in that Exercise of them. Which Body of Rules I chuse to call *the Laws of PRIVATE Civil Dominion and Subjection*; because they are only declaratory of that *private* Dominion, which the Members of all Civil Societies have over their *own* parti-

cular Persons; or of the Power they may acquire over *other* Persons, and *other* Things; which, by such Acquisition, become, in many Ways, subject to them: In proper Contradistinction to the *Laws of PUBLICK Civil Dominion and Subjection*, which form the other two Parts of Civil Laws.

Here we should likewise observe, that, as all other Parts of Law, whether those of *publick* Subjection, *publick* Dominion, or *national* Society, are, in Reality, no more, than so many successive Means of maintaining this private Dominion and Subjection, that is the private social Life of Individuals, in the fullest Extent, and easiest Manner, that is consistent with human Existence; our exacter Enquiry into their several *Reasons*, must begin, from an accurate Preconception of these *Ends*, to which they are all successively directed. Which Laws we will consider under the following Heads, in so many successive

PARTS OF THIS BOOK.

- I. OF Private Civil Dominion and Subjection, with its Laws in general.
- II. OF the private *absolute* Dominion or Right, which Individuals have over, or in their own Persons; and the *Laws* that support it.
- III. OF the private *relative* Dominion or Right, which Individuals may acquire over, or in other Persons, or their Actions; and the *Laws* that enforce them.
- IV. OF the private civil Dominion which Persons may acquire over all *irrational Things*; and its Laws in general: Call'd in *English* the *Laws of private Property*.
- V. OF the Laws of Property in Things of a *consumable* or *moveable* Nature, in particular.
- VI. OF the Laws of Property in Things of an *inconsumable* Nature, in general: Being the Doctrine of original Property in them; as it is the *Source* whence most of the *other Kinds* of Property are derived.

- VII. OF the Laws of *partial Property*, as thence deriv'd, by a Distribution of the *different Products*, or *Uses*, of the *same Portion* of the Earth to *different Persons*.
- VIII. OF the Laws of *limited Property*; as thence, also, deriv'd, by certain Limitations set to the *Duration* and *Extent* of the Proprietor's Right; being, according to the *Stile* of the *English Laws*, the *Doctrine of ESTATES*.
- IX. OF the Laws of *conditional Property*; as thence likewise deriv'd by certain transient or permanent Conditions, annex'd to the Beginning, or Continuance of the Proprietor's Right; where of *feudal Property* in general, and *English Tenures* in particular.
- X. OF the Laws of Property in *Trust*, to other Persons *Uses*; as thence also derived, by a supposed Separation of the Right of *Retaining* from the Right of *Enjoying*.
- XI. OF the Laws of *joint Property*; as thence likewise derived, by a Disposition of the same intire, or individual *Proprium*, jointly, to *more Persons* than *one*.
- XII. OF the Laws of Property, in Things of an *incorporeal*, as well as *inconsumable Nature*.
- XIII. OF the Rights and Laws peculiar to those Persons, who are under some *private Incapacity*, either of *managing* the private Rights and Dominion which they have, or of *acquiring* such as are merely necessary for their Subsistence; therefore called the Laws of *private Incapacity*.

P A R T I.

Of the *Laws* of PRIVATE *Civil Dominion* and *Subjection*, IN GENERAL.

THE *general Consideration* of the Subjects of this Book, as they are to be stated from the Reasoning laid down in the first Book, will be here delivered in the following

S E C T I O N S.

- I. Of those *Parts* of private human Life and *Actions*, in the Exercise of which, 'tis necessary the publick Understanding should permit, and the publick Force support Men; usually called private civil Liberties and Rights, in general.
- II. Of the several *Kinds* and *Differences* of Persons concerned in, or capable of, those Rights and Liberties, in general.

III. *Of the several Circumstances and Facts by which those Liberties and Rights may be acquired; where of Nativity, Promises, and Contracts, &c. their Nature, Kinds and Obligations, in general.*

IV. *Of the Signs, Language, or Instruments, &c. by which such Facts, Acquisitions, or Obligations, may be expressed or registered.*

PART II.

Of the private, absolute DOMINION, or Rights, which Individuals have to their own PERSONS; and the LAWS that support it.

AFTER this general View of these Objects, and ultimate Ends of all Civil Laws, the first Object of our particular Consideration is that *private* Command over their own Persons, *absolutely* considered, which is so indispensably necessary to Mankind, for the just Exercise of every Part of Life, whether Sole or Social: for without it, they can neither fitly acquire, nor justly enjoy, their *relative* Rights in Persons or Things. *Note*, The Subjection Men stand in to the *Publick*, or Societies, will be considered in the next Book, while this private Dominion will be stated in the following

SECTIONS.

- I. *Of Right to Life, and Integrity of Person, in Opposition to violent Death, Wounds, Maims, &c. and the Laws that defend it.*
- II. *Of Right to Freedom of Body and Mind, in general; in Opposition to forcible, local Restraint, Fear, &c. with the Laws that guard it.*
- III. *Of Rights to a free Application to all the Offices of private Life, not contrary to Mens particular, or general Obligations; with the Laws that support them.*
- IV. *Of Rights to Reputation in various Degrees and Kinds, and the Laws that defend them; in Opposition to Slander.*

PART III.

Of the private RELATIVE Rights or DOMINION, which Individuals may acquire over, or in OTHER PERSONS, or their Actions; and the LAWS that inforce them.

MANKIND being thus defended in their absolute personal Rights in general; the Nature of their Existence makes it necessary for them to put on various *Relations* or *relative* Rights, both to particular Persons, and Things; in doing of which they are left to the Use of that *private* Liberty, in which the preceding Laws defend them. So that, herein, their own *private Actions* become so many *Laws* to themselves,

themselves; and, except it be in the Appointment of some mere *external Forms*, Civil Laws have little more to do than to affirm the Rights and Engagements thence arising, if they happen to be controverted.

AND here, though some Dominion at least over *Things* (that is, Property) may be more immediately necessary to every Man than any *personal Engagements*; yet, as those Engagements are of a simpler Nature than many of the Laws of Property, I shall first consider that Part of them which are terminated in *personal Duties of Action* only, without involving any *distinct Idea* of Property: Leaving those that do so to their Places in the following Part of this Book: and examine the others in the subsequent

S E C T I O N S.

- I. *Of those Wants of mutual Assistance and Action, which render certain personal Engagements necessary to Mankind, their Sorts and resulting Obligations, in general, so far as they are Objects of civil Compulsion.*
- II. *Of that principal Contract between Individuals of different Sexes, for mutual Society, and Propagation of the Species; the mutual Relations, Rights and Obligations thence resulting, in the first Instance, where of Espousals, Marriages, &c.*
- III. *Of the personal Relations thence derived, in the second Instance, by such Propagation and Birth; with their arising Rights and Obligations between Parents and their Children; so far as they become Objects of the civil Laws.*
- IV. *Of the Relations of Consanguinity, or Affinity thence derived, in the third, or further Instances, as they become Foundations of civil private Right, and Objects of Law.*
- V. *Of other private personal Relations of a durable Nature, which Men enter into by express Contracts; such as Partnerships in Action, and Services for a Term of Time, to general, or particular Purposes; with their consequent Rights and Obligations as enforced by Laws. Where, of perpetual Servitude, commencing by Victory in War, Purchase, or Contract.*
- VI. *Of personal Relations of a more transient Nature, that are terminated in some particular Action; such as those arising from express Contracts for doing a single Act, or particular Piece of Work; with their arising Consequences and Laws.*
- VII. *Of private personal Relations, arising from tacit Contracts; such as those between Persons exercising any particular Trade or Profession, and the Persons that employ them, without express Contract; their reciprocal Duties and Laws.*
- VIII. *Of personal Relations, arising without Contract, by certain voluntary Actions done for the Benefit of others, without their Requests; with their emerging Rights and Obligations.*
- N. B. Voluntary Actions to the Detriment of others, of all Sorts, have their Places under the Article of *Wrongs*, to all the preceding, or subsequent Rights, &c.
- IX. *Of the Derivation, or Transfers, of any of these Relations, or their resulting Rights and Obligations, from the Persons originally concerned, to others; with their several Modes, Consequents and Laws. Where, of Fidejussors; Bondsmen; Assigns; Executors; and Heirs, &c.*

PART IV.

Of the *PRIVATE civil Dominion* or *Right* which *PERSONS* may acquire in *THINGS*; and its *Laws*, in *general*; usually called the *Laws* of *PRIVATE PROPERTY*.

THOSE private relative Rights that Mankind may acquire in each others *Persons* or *Actions*, which include no distinct Idea of Property, with their arising *Laws*, thus examined; we come now to inquire into the Powers they may gain over the various *Things* necessary for human Life, called *Property* in them; which, being a Right to the sole Command and Use of any Thing, arises from the Impossibility there is that any one Thing should serve two Persons, to all its possible Purposes, at one and the same Time: And gives, therefore, Birth to a very large, but very necessary, Body of Laws, for determining who should have that Command over them.

For, as all Things necessary for Life are capable of being wasted or worsted, saved or improved; if the Consequence of such wasting or worsting, on one hand, and such Saving and Improvement, on the other, did not, by the Laws of Property, light on the Persons who were the respective Causes of them, the whole Burden of human Life would fall on the few Frugal and Industrious; 'till Profusion and Idleness had reduced the World to a Desert: So weak are the leveling Schemes of warm Heads, and so vain the Chimera of enjoying all Things in common.

SOME of these Laws, while wrapt up in Terms of Art, and confusedly disposed, seem, in many Parts, a little intricate, particularly to Beginners; but may, however, by Distinction and Order, be rendered plain enough to the Attentive; especially if, like the Geometers, we begin with the *simplest*, and advance gradually to the most *compound* Parts of this Doctrine; which will be begun, in general, in the following

SECTIONS.

- I. Of the Necessity of Property, to human Life; the Things in which it may be, and the Persons that may have it; with the Means of acquiring it originally, in general.
- II. Of the Proprietor's Rights in his Proprium, which, in general, are those of Retaining, Using, and Disposing.
- III. Of the Proprietor's Right of Disposing, more particularly. Where of Lending, Letting to Hire, Exchanging, Selling, Giving, and Transmitting by Descent; with their Correlatives, Borrowing, Hiring, Exchanging, Buying, Receiving, and Succeeding by Descent; and the Laws thence arising.
- IV. Of Wrongs done to the Proprietor's Rights, whether of Retaining, Enjoying, or Disposing; with their Consequences, in a new Set of Rights, Obligations, and Laws.

PART V.

Of the LAWS of *Property* in Things of a CONSUMABLE or MOVEABLE Nature, in *Particular*.

THE Necessity and Nature of *Property* thus explain'd, in general; we proceed, according to the propos'd Method, to consider the simplest Kind of it; which is in those Things that *perish* in the using; or are of so *moveable* a Nature, that they may be as effectually secreted or lost, as if they were actually perished: and are therefore subject, in many respects, to the same Laws with Things actually perishable; of all which in the subsequent

SECTIONS.

- I. Of the several Kinds of consumable or moveable Things, in which *Property* may be acquired.
- II. Of the Acquisition of *Property* therein; whether intire or partial, sole or joint: with their several Laws, where of Pledges and Depositums.
- III. Of the Proprietor's Rights therein, whether of retaining, using, or disposing; with their Laws.
- IV. Of the various Wrongs to such Rights therein; and their Consequences, in the new Rights and Obligations thence emerging.
- V. Of those Laws and Appointments, by which a certain Degree of civil Permanency and Duration may be given, to such, otherwise, perishable Things; and their consequent Rights, &c. in general.

PART VI.

Of the LAWS of *Property* in Things of an INCONSUMABLE NATURE, in general; being the *Doctrine* of ORIGINAL PROPERTY in them.

PROPERTY in its most general Nature, and the simplest Kind of it, in *moveable* or *consumable* Things, thus examined; we come to those of a more *permanent* and *compound* Sort; where, 'tis to be observed in general, that Portions of the Earth we inhabit, are of so compound a Nature in themselves, by the Variety of their Products, or Uses; and at the same time so durable, that it is the various Restrictions, Limitations, or Conditions, under which Mankind have distributed those Portions out to each other, according to their several Wants and Designs, which give Rise to the more intricate Parts of this Doctrine:

AND, in order, therefore, to deliver and examine it with the greater Clearness, we will begin with the Idea of *intire* and *unlimited* *Property* in them, called by the *Latins*,

Latins, Plenum Dominium, and may, not insignificantly, be called Original Property, in English: The Consideration of which, in general, will lead us distinctly into all its Consequences, as will appear in the following

SECTIONS.

- I. Of Original Property in Portions of the Earth; the Persons and Means by which it really was, or by which, for Distinction's Sake, we may suppose it was acquired.
- II. Of the Original Proprietor's Rights in such a Proprium, which, in general, are retaining and using it to all its possible Purposes, or disposing of it intirely, or partially, and that with various Limitations or Conditions.
- III. Of the Original Proprietor's Right of disposing Part of the Uses to which a Portion of the Earth is serviceable, and retaining the Thing, with its other Uses, to himself: whence have arisen various Kinds of partial Property, and as many Sets of reciprocal Rights and Obligations.
- IV. Of the Proprietor's Right of setting some limited Duration to the Dispositions he makes of his Property: whence have arisen all limited Estates for Lives, Years, &c. with another Kind of reciprocal Rights and Obligations.
- V. Of the Proprietor's Right of making any, or all the precedent Dispositions of his Property, either absolutely, or on certain stipulated Conditions; and those either transient, or permanent, between himself and the derivative Proprietor: whence have arisen a great Variety of conditional Property, and as many various Kinds of reciprocal Duties and Obligations.
- VI. Of the fictitious Power of separating all the possible Uses of a Thing, from the Right of retaining it; and vesting them in different Persons: whence has arisen Property in Trust, to other People's Uses; whether particular Uses, or Uses at large; and a consequent Set of Rights and Powers, both in the Person retaining, called a Trustee, and in the Person using, who may, by Analogy, be called an Usee.
- VII. Of the Original Proprietor's Right of disposing, or transmitting any intire Proprium jointly, to more Persons than one; whence has arisen Joint Property, with its several Rights, and Laws.

PART VII.

Of the Laws of PARTIAL Property, as they arise from a Distribution of the DIFFERENT PRODUCTS, and Uses, of the same Portion of the Earth to DIFFERENT Persons.

THOUGH no one Portion of the Earth can serve two Persons, at the same Time, to all its possible Uses, whether of enjoying, or disposing; yet may the various Products and Uses of which 'tis, at the same time, capable, be distributed to different

ferent Persons: as the *Herbage* to one, the *Trees*, &c. to another, the *Minerals* to a third, and so on: where their *separate* Interests, in Things so naturally united by their Origin, necessarily produce a Variety of Laws, for regulating their mutual Rights therein; which, notwithstanding all such Precautions, so constantly clash, as to render some of these Kinds of Property very inconvenient to the Possessors, and detrimental to the whole Society, by preventing Improvements, &c. but of that transiently. This kind of Property, and its Laws, will be examined in the following

S E C T I O N S.

- I. Of these Kinds of partial concurrent Property, with the different Relations, Rights and Wrongs which they give rise to, in general.
- II. Of Property in the vegetable Products of other Men's Soil, of several Kinds; the mutual Rights of the Owner of the Soil, and the Persons to whom such Products belong, and the Wrongs to them.
- III. Of Rights to the taking wild Animals in other Men's Soil, by Hunting, Fishing, or Fowling, &c. with their arising Wrongs.
- IV. Of Property in, or Rights to, the Fossil, or Mineral Productions of another Soil.
- V. Of Rights to Ways, Watering, &c. in other Men's Lands.
- VI. Of Rights to use other Men's Building for the Support or Foundation of our own, such as Property in the upper Stories of Buildings, usual in some Towns, and our own Inns of Courts.
- VII. Of Property of these Kinds, as they may be vested in some Man's Person, or appendant to some other Portion of the Earth: with their Rights and Laws.

P A R T VIII.

Of the Laws of LIMITED Property, as they arise from Limitations set to the DURATION and EXTENT of the Proprietor's Right;

Being, according to the ENGLISH Laws,

The Doctrine of ESTATES.

BESIDES the foregoing Kinds of concomitant Property, which the various Products and Uses of any Portion of the Earth gives Birth to, the indefinite, if not infinite, Duration of those Portions gives the Original Proprietor an Opportunity of disposing of his Right in them for various limited Times, or Terms; and that, either simply to one Person for his Life, or for a Number of Years; or subsequently to one Person for his Life, and to another for Life or Years, &c. afterwards.

IN which Cases, the original Proprietor retains to himself, or his Representatives, his Right, in Things so disposed of, for all the Residue of that indefinite

Duration of which they are capable; which remaining Right, the *English Law*, in some Cases, calls a *Reversion*; because at the Expiration of such limited Terms, his entire Right reverts or returns to him.

Now, this manner of *limiting* Property gives Birth to many necessary Rules, not only of *publick Law*; for determining, how far Men shall have Power to transmit such Limitations to Posterity; but also of *private*, to adjust the respective Rights and Interests of the original, and the derivative Proprietors, in those Limitations which are permitted.

AMONG which Rules lye some of the more intricate Questions of either Law; though the Difficulties often arise, rather from the Significations of the Words, in which such Limitations are attempted to be expressed; than from the Things themselves; which are generally pretty plain, where that Signification is once agreed on; but of that transiently. This Doctrine of Estates will be examined in the following

S E C T I O N S.

- I. Of the various Kinds of Limitation that may be set, either to the Duration of a Proprietor's Right in his Proprium, or to his Power of disposing of it; with their Causes, and Consequences, in general.
- II. Of Property limited by the Quantity of Profits reaped; such as Assignments of Lands, &c. for the Payment of certian Sum, &c.
- III. Of Property limited by divers Portions of natural Time; as Days, Months, Years; with the respective Rights of the original and derivative Proprietor, where, of Property at mere Will or Sufferance.
- IV. Of Property limited by the Duration of particular Persons Lives; arising either from the Act of the Parties, where of ordinary Property for a Life, or Lives; or from the Appointment of some Law, where of Tenant in Dower, and by Courtsey; with the respective Rights and Powers of both the Proprietors; and the Wrongs to those Rights, &c.
- V. Of Property limited by the Duration of one Man, and the Descendents of his Body, by one particular Woman, whether Male only, or at large; with the respective Rights of the original, and derivative Proprietors in the first or second Instance, &c. where of Fee Tail Special, Tenant after Possibility of Issue extinct, &c.
- VI. Of Property limited by the Life of one Man, and the Issue of his Body in general, whether Male only, or at large; where of Fee Tail General, &c.
- VII. Of Property limited by various other Contingencies, that are out of the Power of the Proprietors; for if they are in the Proprietor's Power, they become properly Conditions, and belong to the subsequent Part of this Book.
- VIII. Of Property limited by substituting divers of the preceding Limitations, to take Place, one after the other, with their Effects: where of executory Devices, contingent Remainders and Perpetuities.

IX. Of Property, at large, to a Man and all his Consanguinity, called, in English, his Heirs, and his Property a Fee Simple; which, tho' it vests the Derivative, with all the Rights and Powers of the original Proprietor, is yet, both in Terms and in Effect, a civil Limitation; since, in case of Death without Alienation of Kindred, the Proprium, according to the Laws of most Nations, returns to some real, or supposed, original Proprietor, and is called in English an Escheat.

PART IX.

Of the Laws of CONDITIONAL Property, as derived from certain Conditions annexed to the Proprietor's Right.

Under which are contained,

The Laws of FEUDAL Property, and English TENURES.

AGAIN, the Proprietor who disposes of his Proprium, in any of the partial, limited, or entire Manners which we come from examining, may do it, either absolutely, or on certain stipulated Conditions; and those, either transient, and ending in a single Act, as Lands to a Man on the Proviso that such, or such, an Act be done; or permanent, which go along with, and accompany those Dispositions through all the Time of their Duration, or through certain Parts of it, as Lands to a Man for Years or Life, &c. on Condition that he does certain annual or occasional Services, or pays certain Sums of Money, &c. annually.

THESE durable Conditions may, again, be simple, as those above-mentioned, or accompanied with certain personal Respects, of Honour, or Fidelity, or both, which the derivative Proprietor and his Representatives, are to perform to the Person of the original Proprietor, and his Representatives, who, in that Case, is called a Vassal or Lord; which Lord, likewise, owes Protection to the derivative Proprietor, who is called a Vassal or Tenant, and the Thing so held, a Feud, in Scotland a Fee; but has not, in the English Law, any Name that distinguisheth it from things held by the simple Conditions, of mere Rents or Services.

THIS Kind of Feudal Property, introduced by the Longobards, Saxons, &c. has spread, more or less, all over Europe, and, from the vast Variety of its attendant Rights and Services, many of them local and peculiar, gives Birth to a long Detail of Laws, of which, the Rules of our own Tenures are evidently a Part; but, in considering them, I shall content myself with such general Views, as may serve to lay before my Readers, the Purposes to which they were originally designed, their most fundamental Maxims, with their Benefits or Disadvantages to Civil Society in general. Conditional Property will be therefore considered in the following

SECTION S.

- I. Of the several Kinds of Conditions on which Men may dispose of their Property, whether transient, or permanent; with their Uses, Fitness, and Effects, in general.

- II. *Of Property on those transient Conditions, which, in a single Act, antecedently give Birth; or subsequently, put a Period, to the Proprietor's Right.*
- III. *Of Property held on the simplest Kinds of permanent Conditions; such as ordinary Services, or Rents, whether natural, and in Kind; or artificial, in Sums of Money: With the mutual Rights and Powers of the Landlord and Tenant.*
- IV. *Of Property held by Feudal Duties and Services, in general; the Things or Propriums that are usually so held, from particular Portions of Land, up to Sovereign Principalities themselves: With the most remarkable Rights and Services attendant on them.*
- V. *Of the Feudal Services or Tenures, most frequent in England, in particular; with their larger Compositions, into Manors, and Honours, and their attendant Courts and Regalities: Under which, formerly, lay Part of the subordinate Government of England, both Civil and Military.*
- VI. *Of the original Derivation of those Tenures, from the Crown, or King, as Lord Paramount; his consequent Rights and Powers; with the Courts of the Constable, or Earl Marshal, and that of Wards and Liveries thereon attendant: Which involved some of the Civil, and the greatest Part of the old Military Government of the Kingdom.*

PART X.

Of the LAWS of Property in TRUST, to other Persons USES.

NOR are we yet at the End of human Invention, for giving Permanency to their Property, and setting Bounds to the Dispositions they make of it. The Idea of a Proprietor's Right to retain his Proprium, without using it, has given rise to the fictitious Separation of those Rights, by giving the Right of *Retaining*, to one Person; and the Right of *Using*, to others: Where the former is called a *Trustee*, and the latter may therefore be called an *Usee*.

THE first Intent of this Disposition was, doubtless, to make the Trustee, called in *Latin*, *Fiduciarius*, absolute Master of the Thing; under no other Restraints than those of his, private, Honour and Prudence: But such Confidences were so frequently abused, as soon induced the Creators of them, to add some special Limits thereto; on which the Magistrate interposing, to settle the respective Rights of the Trustee and Usee, the Reasonings thereon grew, at last, to one of the most subtle Parts of Law.

FOR this metaphysical Doctrine of Property, (as I think it may be called) when followed, as it may be, and was, thro' most of the different Kinds of Propriums hitherto mentioned, in all their attendant Conveyances, Suits, Pleadings, &c. produced so much double Proceedings, so many Circuities of Action, and so much Intricacy in them all, as made a further Set of Regulations requisite, especially in our Laws. The Necessity for which, the Reader will perceive, by the second Section of this Head; where this Doctrine is pursued, in its unlimited State, through some remarkable Parts of Property, and by which he will the better

ter understand the Limits actually set to it, both by the *Roman* Laws, and our own. This Doctrine of Trusts and Uses will be stated in the following

S E C T I O N S.

- I. Of Property in Trust, its original Design, various Kinds and Purposes, in general.
- II. Of Property in Trust, to private Uses, considered, in its unlimited Consequences, through divers remarkable Heads of Law.
- III. Of Property in Trust, to private Uses, as it stands regulated by the *Roman* Laws.
- IV. Of Property in Trust, to private Uses, as it stands regulated by the *English* Laws; especially the Statute for converting Uses into Possession.
- V. Of Property in Trust, to publick Uses, which cannot be conveniently converted into Possession, because they belong to an uncertain Multitude, such as some of the Persons mentioned in the last Part of this Book, and where the Trustee, tho' otherwise a private Man, becomes a sort of publick Magistrate for the Distribution of the arising Profits, &c. among that Multitude: Such as our own Trustees for divers charitable Uses, &c.

P A R T. XI.

Of the LAWS of JOINT PROPERTY, as they arise from the same individual Thing's being the Property of DIFFERENT Persons.

BUT notwithstanding all these preceding Cautions, which Men have taken to hold their private Rights and Properties, in Things, separately from each other; to avoid the various Inconveniencies that attend Community therein: Yet divers Circumstances of private civil Life throw them again into a Community; such as voluntary Gifts, Purchases, Descents in Law, &c. and that thro' most, or all, the preceding Kinds of Property; which gives Birth to another Head of Laws, either for adjusting the Manner in which they shall enjoy such Things, jointly; or for dividing them into separate Propriums, where such Separation is practicable.

AND here it may not be amiss to observe, That these Kinds of Property are very different from that, which in the seventh Part preceding, we have called *Partial Property*, which consists of really *separate* Propriums, in the different Products of the same Portion of Earth; whereas these arise from *one* and the *same* individual Proprium's belonging to different Persons, jointly; the Nature and Laws of which will be considered in the subsequent

S E C T I O N S.

- I. Of the several Facts or Accidents, which give rise to Joint-Property, and the several Things in which it may be, with their Consequences, and arising Rights, in general, where of Joint-Enjoyment, Joint-Conveyance, Partitions, &c. in general.

II. Of

- II. Of *Joint-Property* in *intire Portions of Earth*, or *their partial Products*; its *arising Rights and Laws*.
- III. Of *Joint-Property* in the *limited Propriums before-mentioned*, or *Estates for Terms*; its *arising Rights and Laws*.
- IV. Of *Joint-Property* in the *conditional Propriums before-mentioned*, its *arising Rights and Laws*.
- V. Of *Joint-Property* in *Trusts and Uses*; its *arising Rights and Laws*.
- VI. Of *Joint-Property* in *Things of an incorporeal Nature*; its *arising Rights and Laws*.
- VII. Of *those two Kinds of Joint-Property*, which the *English Law*, in particular, distinguishes by the *Names of*, *Joint-Tenancy* and *Tenancy in common*; their *different Rights and Laws*.

P A R T XII.

Of the LAWS of *Property* in *Things* of an INCORPOREAL, as well as an INCONSUMABLE *Nature*.

HITHERTO we have, principally, considered the private Dominion that may be acquired over *corporeal Things*, which have a physical Existence; whether they are the *consumable* and *moveable Products* of the Earth; or those *permanent Portions* of it, whence, as from so many Funds, such *consumable Things* are derived.

BUT besides these, the durable Nature of human Life and Obligations, (either in private Individuals, and their Representatives, or in civil Society) gives rise to various Sorts of *permanent Obligations and Rights*; from whence, as from so many *inconsumable Sources*, human Subsistence is deriv'd, in a Manner something analogous to that deriv'd from Lands: Such as *Stipulations for the Payment of annual Sums*, for Years or Life, &c. Rights to the *exclusive Exercise* of several Trades and Arts, &c. and such are the Residue of an original Proprietor's Right, during the Time that a particular Estate is granted out of his durable Proprium, called, in the *English Law*, a *Reversion*: Such also are the conditional Reservations of *Rents and Services*, whether *Simple* or *Feudal*, on which Men convey their Estates: Which last Sorts we have already considered in part; but, as in many Respects they lie under the Rules peculiar to Things of an incorporeal Nature, it will not be amiss to review them here, in that Light.

I AM sensible that divers of these Things are, by some Civilians, thrown into the Doctrine of Obligations at large; as they arise from private Contracts: But, as I am writing in *English*, and perhaps to *Englishmen* only, I shall herein conform to the Style of our own Laws, which, for many Ages, have treated many of them in a Manner similar, in divers respects, to Estates in Land: And as this Manner of stating them is, in itself, the most distinct, so it will be my Authority for ranging some others under the same Head; which, if it would not have seem'd too great a Novelty, I might have styl'd the *Laws of durable Propriums*, that have only a *moral or civil Existence*, in Contradistinction to Lands, which have a *physical* one. Of all which in these

SECTION S.

S E C T I O N S.

- I. Of the several Kinds of incorporeal Things, in which Property may be; their common Agreement among themselves, and their common Difference from those of a corporeal Nature, in the Manner of their Existence, and Acquisition, &c. in general.
- II. Of Property arising from mere personal Contracts, of a permanent Nature, for various Terms, as Years, Lives, &c. where of ANNUITIES, PENSIONS, OFFICES OF PROFIT about private Persons, &c.
- III. Of Property arising from personal Acts or Contracts of a durable Kind, but locally charged on Lands; where of RENT-CHARGES, CORRODIES, &c.
- IV. Of Property in Rights to the sole Exercise of certain Trades, Arts, or Inventions, for various Terms: which, taking rise from publick Laws, are so many Funds whence human Subsistence is derived.
- V. Of Property in civil Offices of PROFIT, which, by the Laws of various Countries, may be held for Terms, some of them hereditary, and transferable by private Contracts: where, while publick Laws hold the Officer to his Duty, under divers Penalties, the Laws of private Property defend him in the Enjoyment of the Profits; which, in that Case, become a kind of private Property, with a publick Charge annex'd.
- VI. Of Property in publick Debts; which, with their assign'd Securities for Payment of Interest, become, till they are discharged, so many Funds of consumable Property; whether existing in the form of joint Stocks, or separate Annuities, &c.
- VII. Of the Property an original Proprietor has in the Residue of a definite or indefinite Term, during the Time that a shorter Term is granted out of it; whether attended with conditional Rents, or Services, or not, called a Reversion.
- VIII. Of that incorporeal Kind of Proprium which consists in Rights to Redress of Wrongs, especially to some Kinds of durable Property; which (as Things of civil Existence, that may be retained, us'd, transferr'd, or extinguish'd by Laws peculiar to themselves) are a kind of Property, in the general Sense in which we have hitherto us'd the Word, for the Consideration thereof, this seems the proper Place; tho' the Forms and Methods of obtaining that Redress belong to the Laws of judicial Magistracy, in the 4th Book.
- IX. Lastly, Of that most compound Proprium, which (to divers civil Purposes) collectively involves all the transferable Rights and Property of one Person, called, by the Romans, Hæreditas, in respect to the Heir; in English, by Periphrasis, A Man's whole Estate, Real and Personal; which, tho' it may consist of Things corporeal and incorporeal, is yet, in that State of civil Union, an incorporeal Thing, whose Consideration seems properly to fall under this Head of Law.

P A R T XIII.

Of the RIGHTS, and LAWS peculiar to Persons under some PRIVATE INCAPACITY.

HAVING thus affirmed the Powers and Rights of the able Part of Mankind, and guarded their Acquisitions with a long Suit of Laws; both Humanity and just Policy

licy, which are indeed the same Thing, bid us remember, that in a World, peopled with such frail Inhabitants, a great Variety of general natural Facts, or particular Accidents, lay some Persons under a temporary *Incapacity* of using or administering, in a proper manner, the Rights and Necessaries of Life, which they have acquired; and place others, out of a convenient Possibility of acquiring those they want: All of whom (either as Persons that may be, or that have been, useful Members of the Society) have, therefore, a just Claim to the Care of the *publick* Understanding; and some of them, both to that, and the Assistance of the *publick* Purse.

I AM sensible, the Objects of these Laws are very differently placed, in different Systems of Law, some of them being handled in the Doctrine of *Persons*, before Property has been consider'd, tho' they include that Idea very distinctly; others of them being referred, in a very confused manner, to the Duty of some Magistracy, to which indeed they all in part belong, as they may come judicially before them: But, as they do, when justly considered, belong to this Body of private Law, and as the Necessity and Fitness for them all follow, evidently, from nearly the same Principles, I have ventured at the Novelty of collecting, and placing them together, under this common Title, of *the Laws and Rights of private Incapacity*.

WHERE, however, the Reader is desired to attend to the Limitation of *private* Incapacity; since *publick* Incapacities (except in the Case of *Aliens* before spoken to) are, in themselves, so many penal Sentences of the Law itself; and have, therefore, their Places in the criminal Part of it; of which Kind are many of our own, and some of the *Roman*, *Diminutiones Capitis*: But of that transiently; it is those *private* Incapacities, only, that will be considered in the following

S E C T I O N S.

- I. *Of the several Kinds of these private Incapacities; the Reasons for, and Ways of, providing against them, in general.*
- II. *Of the State of Infancy, with the Loss of Parents; or with suspected or unnatural Parents, in those that have Property; its Rights and Laws. Where of Orphans or Minors, and their Guardians.*
- III. *Of the State of Idiocy, in those that have Property. Where of such and their Guardians.*
- IV. *Of the State of Lunacy, in those that have Property, its Rights and Laws. Where of Lunatics, and their Guardians.*
- V. *Of the State of Infancy and Poverty, without Parents, or, with such as are themselves incapable; its Rights and Laws. Where of exposed and Foundling Children, and their Care, in various Ways.*
- VI. *Of the State of Poverty in Adults, with Sickness, decrepit old Age, and Lunacy. Where of Hospitals, Alms-houses, and Bethlehems.*
- VII. *Of the State of Poverty in valid Adults, but without present Opportunities of subsisting, though willing, and industrious; its Rights and Laws. Where of Work-houses, &c. Note, Idleness, and Vagrancy in this State, with Bridewells, &c. are the Objects of criminal Laws: And though, for Conveniency, their Provision may be, locally, the same, yet 'tis under very different Rules; and should be, if possible, in different Places also; because bad Examples are more apt to spread than good ones, especially among that Rank of Men.*

BOOK III.
ELEMENTS
OF THE
LAWS
OF
PUBLICK CIVIL SUBJECTION,
Usually called
CRIMINAL LAW.

*Omnia scire, non omnia resequi; parvis peccatis, veniam; magnis, severitatem commo-
dare: nec parâ semper, sed sæpius penitentia contentus esse.*

Tacit. vit. Agricol.

CRIMINAL LAW
OF THE
UNITED STATES
OF AMERICA
VOLUME II
OF THE
PUBLICK CIVIL SUBJECTION
LAW

Printed at the Office of the
Printer of the United States
at Washington, D.C.
1877

Book III ELEMENTS of [33]
they are of great Use, for private as well as publick Good,
contributing in the highest Degree to make the Society quiet
and happy, and to secure to each individual his Liberty, and
the Possession of his Property, and to preserve the whole in
a State of Peace and Order, and to promote the common
Interest, and the Happiness of the whole Society.

INTRODUCTION.

THE former Book having considered the Nature of, and Reasons for, those Laws by which Men are immediately maintained and supported in the Exercise and Enjoyment of their *private Rights*, and social Life; we come, in the present, to examine the Expediency of those *publick Restraints* under which they are usually laid, as so many fit Mediums for the fuller, or easier, obtaining the former Ends; for such, on a just Examination, they will all be found:

Tho' there is this Difference between them, that those were a Body of Rules, to the Observance and Support of which the *whole Society* is tied, for the Sake of each *Individual* immediately, and the *Publick* more remotely; whereas these are a Set of Laws, to which each *particular Person* is obliged, for the Benefit of the Community, primarily; and his own, but in the second Place; but forming, both together, that Reciprocation of Duties, on which all social Happiness in Civil Society must depend.

SOME of the Rules of this Head are, indeed, such as require the Legislator's exact Attention, lest, instead of preventing, they should occasion Mischief; but, when wisely instituted, they

they are of great Use, for private as well as publick Good ; contributing in the highest Degree to make the Society quiet, and flourishing, internally ; powerful, and therefore peaceful, externally ; and durable, in all those Respects. All which will be considered in the several subsequent

PARTS OF THIS BOOK.

- I. Of *Publick Civil Subjection*, as it arises from the several Duties that the individual Members of Civil Society owe to the Publick, and its Laws in general.
- II. Of the Laws that are designed to *prevent* the Breach of all Publick Duties in general, by *Publick Regulations of Religion*.
- III. Of the Laws that are designed to *prevent* the Breach of all Publick Duties in general, by *Publick Regulations of Education*.
- IV. Of the Laws that declare, and punish the Breach of, those Duties that Men, in *all States* of Private Life, owe, *indirectly*, to the Publick.
- V. Of the Laws that declare, and punish the Breach of, those Duties which Men, in the *particular Professions* of Private Life, owe, *indirectly*, to the Publick.
- VI. Of the Laws which punish the Breach of those Duties, that all the *subordinate Members* of Civil Society owe, *directly*, to the publick Government, or Magistracy itself.

PART I.

Of PUBLIC *Civil* SUBJECTION, and its LAWS, in general.

BEFORE we enter on a specifick Examination of these Laws, and their Objects, in particular, it will be very proper to consider the Duties on which they are founded, with their Nature and several Kinds, &c. in general, which will be done in the following

SECTIONS.

- I. Of the Duties which the several Members of Civil Society owe to the Publick, as the Foundation of these Laws, in general.
- II. Of the several publick Inconveniencies, Damages, and Crimes, that arise from the Breach of those Duties.

III. Of

- III. *Of the several Kinds of publick Prevention, Restraint, Correction and Punishment, their Degrees and Fitness, as Remedies, in general.*
- IV. *Of the Idea of Distributive Justice, as stated by some Writers; and, whether there is, or can be, any other Moral Relation or Proportion between Crimes, and their Punishments, than those of repairing Damages, amending the Offender in present, and preventing the like for the future?*
- V. *Of the Nature and Use of Remissions, or Suspensions of Punishment, and absolute Pardons, with their proper Objects, and Laws in general.*

PART II.

Of the LAWS that are design'd to PREVENT the Breach of all PUBLICK DUTIES in general, by Publick Regulations of RELIGION.

THIS general View having shewn us, that the *Prevention* of Evils is among the most eligible Means of Civil Government; and as, of all Preventions, those are the most effectual, that, by reaching the Heart or Understanding, take away the Will to offend, *Religion* must, in various Lights, be the Object of the publick Understanding.

For, as its just *Inculcation* may be one of the firmest Bonds of Society, so, both its *unregulated* Influence, and *injudicious* Regulation, often have been, and always must be, productive of some of the most fatal Disturbances to civil Peace; which possible; or rather certain Effects of it, in all those Ways, give it justly the *first* Place in this Head of Laws; where it will be considered in the following

S E C T I O N S.

- I. *Of Religion; and Mankind, as they are, by the Nature of their Being, Worshipers of some God; whence arises the Necessity of some Regulation thereof, with what that ought to be in general.*
- II. *Of Laws that establish the publick Teaching of the Doctrines of some Religion in Theory only, and their Necessity; to prevent the infinite various Illusions of private Opinions, and their evil Consequences: And how far Men may be compelled to a due Examination, only, of that Theory.*
- III. *Of Laws that establish publick Acts, and Ceremonies of Worship, in Conformity to such publick Theories; and how far Men may be compell'd to a Participation therein.*
- IV. *Of Laws that tolerate the publick teaching of private Opinions, or Systems of Religion; their Nature and Bounds.*
- V. *Of Laws that tolerate the publick Exercise of Acts and Ceremonies of Worship, according to such private Opinions; their Nature and Bounds.*

PART

PART III.

Of the LAWS that are designed to PREVENT the Breach of all PUBLIC DUTIES in general, by the Public Regulation of EDUCATION.

MENS Minds, thus armed against Delusions, by the Care of the publick Understanding, and instructed in Doctrines, that must teach them, that one of their principal Duties, in this Life, is to perform all the Offices of it, in due Submission, either active or passive, to the Laws of the Society of which they are Members.

THE next Means of preventing Evils are the Rules which the Legislator provides, at least, where he does not prescribe, for educating the growing Generations, in proper Habits of Mind and Body, whether Intellectual, Moral, or Technical; for on those depend, in every Way, their future Usefulness, to themselves, each other, and the Publick: Which will therefore be considered in the following

S E C T I O N S.

- I. Of Education in general, and the Laws that merely provide publick Means for it, in every Way, without Injunctions for using them.
- II. Of Laws that regard or regulate Education in the Mechanick Arts of raising, or fabricating the various Necessaries of Life. Where of Apprenticeships.
- III. Of Laws that regulate or regard Education for the Mercantile Purposes of exporting and importing, or Domestick Dealing in those Commodities.
- IV. Of Laws that direct the forming of Men for the publick Practice of the more liberal Professions, especially Medicine, Law, and Divinity.
- V. Of Laws that regulate Diversions, both private and publick, of all Sorts; which, as they tend evidently to induce various Habits, both good and bad, of Body and Mind, are manifestly Objects of the publick Understanding. Where of Games of all Kinds, publick Spectacles, Plays, &c.
- VI. Of Laws that regulate the uncommission'd Assembly of Multitudes, which, though safely suffered, among a well-disciplin'd People, to many innocent Purposes, cannot lie, wholly, beyond the Eye, and Hand of legal Controul, without great Danger both to private Persons, and the Publick.

PART IV.

Of the LAWS that declare, and punish the Breach of, those DUTIES which Men, in ALL States of Private Life, owe, indirectly, to the Publick.

NOR is it sufficient to form Men, antecedently, by Religion and Education, to the Duties of civil Life, in order wholly to prevent Misdoing: The publick Understanding

ing must accompany them on, thro' the *actual Exercise* of the various Offices and Parts of it, restraining, by *positive Punishments*, as they occasionally arise, many Offences that the former Precautions could not prevent; which is the only Medium of governing approved of by some Reasoners, though, it seems, a little incautiously; since, without some Degree of those *previous* Preventions, these *subsequent* Remedies would, in many Cases, be ineffectual, and in some, the Occasions for them become so numerous, and universal, as to render their Restraint, by *immediate Punishment*, impracticable; but of that transiently.

As to these Laws which look both Ways, and punish the *Past* in regard to the *Future*, we will first examine that Part of them, which, without any *direct* regard to the *Magistracy*, restrain Mens Actions, in *private social Life*: And though many of them, when considered in their *single* Instances, seem to affect the whole Body but lightly; they are yet of such a Nature as, if practised by *Numbers*, would be highly detrimental, if not entirely destructive to it.

For which Reason, they are punished variously, rather in proportion to the *Obstinacy* of particular Offenders, or the *popular* Inclination of Multitudes to the like Offences; than to the individual Offences considered in themselves; and are, for the same Reason, often ranged, in Discourses, according to the several Kinds and Degrees of assigned Punishment; which may be very convenient for *Practise*, but the Order of Things whence they arise, as stated in this Book, seems fitter to give the Student methodical and just Ideas of them: For which he is also prepar'd by the mere Hints of them let fall in general Terms only, in the several Parts of the preceding Book, to which they relate.

AND, as these Laws either regard Men in *all Conditions* of Life, or are *peculiar* to them under some certain *Characters*, or *Professions*, I shall reserve these last for the subsequent Part, and consider those more *general* Duties and Restraints only, in the following

S E C T I O N S.

- I. Of the several Kinds of these indirect Duties and Injuries to Society, with the Reasons for their Restraint in general.
- II. Of Laws that regulate Mens Government of their own Persons, in various Ways, as the Society is interested therein: Where of Idleness and Vagrancy in the Poor; and divers Kinds of Debauchery, and Self-Murder, in both Poor and Rich, &c.
- III. Of Laws that restrain Men as they are Contractors, by rescinding, or even punishing such as are contrary to publick Good: Where, of various Combinations, Usury, and Wagers, together with criminal Breaches of Trust, in Affirmance of some Contracts.
- IV. Of Laws that appoint certain particular Signs, Words, and Instruments, for contracting or conveying; where the Prevention of infinite Uncertainty, and Disputes, is the Good aimed at, and the mere Nullity of the Act is the Punishment of Nonconformity.

V. Of Laws that govern Men as Proprietors, as the Publick is interested in the Uses, or Dispositions, they make of their Property: Where of Profusion, and sumptuary Laws, due Provisions for Children, Perpetuities, and Mortmain, &c.

VI. Of Laws which, over-and-above private Compensation, assign further Punishments for Injuries, of divers Sorts, to other Mens Lives, and Persons, as the Publick is interested in their Welfare: Where of Threats, Assaults, Maims, Rapes, Murders, &c. in that Light.

VII. Of Laws that, besides Restitution, inflict publick Punishments for various Injuries to other Mens Property: Where of Theft, Robbery, Forcible Entry, &c.

PART V.

Of the LAWS that declare, and punish the Breach of, those DUTIES which Men, in PARTICULAR PROFESSIONS of Private Life, owe, indirectly, to the Publick.

THE immediately preceding Part of this Book having given us some Idea of the Private Duties, which Individuals, in all States of Life, owe to the whole Society, and the Laws that criminally punish the various Breaches of them; our next Business is to consider those which arise from certain particular Characters or Professions, which private Men put on, and the Laws which regulate and govern them therein, respectively.

For every Man, who assumes a Character to himself in civil Society, from the meanest, as that of a common Labourer, or Servant, for Example, to the most considerable of private Professions, such as Merchants, Physicians, Advocates; in a word, Persons of all particular Employments, owe, in that Respect particularly, certain Duties to the Society of which they are Members, as they receive Protection from it, under those particular Characters.

THIS Point, though it is true in all Cases, is most evident in such Professions and Mysteries, as are accompanied with exclusive Rights to the Exercise of them; which, as we have seen, in the Part which treats of Mens Education for them, is, by modern Usage, the Case of almost all Trades, &c. since it would be the highest Absurdity to suppose, that the Publick Understanding should vest certain Persons, only, with Rights to practise certain Professions, and yet leave them, therein, to their own Wills, intirely without Controul; because so doing, would be to expose Men mutually to each other's Craft and Frauds, without Remedy.

For the same Education, and constant Practice, that qualifies them to perform those Things better than others, does, at the same time, make them more capable of Deceit, &c. therein: which is, in general, the Foundation whereon the Laws of this Class stand: Tho' it must be own'd, that they are some of those, which, if not well contrived, (to a certain Degree at least) do more Hurt than having none at all, in those Points, would; which is by no means the Case of the Laws of Private Property and Contracts, or those of Publick Magistracy, of which the worst, that ever were formed, are much better than none.

WHERE,

WHERE, nevertheless, it may be observed, that, as the very Being of Civil Society is owing to the Laws last mention'd, so its Well-being, and flourishing State, are much owing to those of this Head, when well contriv'd and duly executed; which will be examin'd in the following

S E C T I O N S.

- I. *Of the Nature and Reasons for those Laws which govern Men under particular Characters and Professions of Private Life, with their Objects in general.*
- II. *Of the Laws that govern the Lowest Order of People, as mere Labourers, or Servants at large, &c.*
- III. *Of the Laws which regulate the Raisers, Preparers of, or Dealers in, the most immediate Necessaries of Life; such as Corn, Bread, Flesh, &c. who in very populous States and great Towns especially, are, if unregulated, capable of imposing on their Fellow-Subjects in many Ways. Where of Weights, Measures, Prices, Markets, &c.*
- IV. *Of Laws that regulate the Numbers, or Ways of working in various other Mechanick Arts and Trades, whose Wares are thereby capable of being reduced to any Standard of Goodness, or proper Degrees of Plenty and Cheapness. Where of publick Premiums and Discouragements, according as those Arts are more or less useful, or wanted.*
- V. *Of Laws that govern Domestick Dealers in gross of all Kinds. Where of Fairs, Staples, Coin, Monopolies, &c.*
- VI. *Of Laws that regulate the Mercantile Employments of carrying out Domestick, or bringing in Foreign Commodities, of all Kinds; which, of all the Laws of this Head, is a Part of Policy of the greatest Concern and Use to each Society, as their Riches at Home, and consequently their Strength and Power Abroad, are thereon most immediately dependent. Where of other publick Premiums, Discouragements, or Prohibitions.*
- VII. *Of Laws that relate to the Government and Behaviour of those that practise the more liberal and learned Arts, such as Law, Medicine, &c.*
- VIII. *Of Laws which regard those who voluntary offer themselves as private Instructors of the People, in any way whatever. Where of the Liberty of the Press in general, and voluntary Tutors or School-masters, &c. as they are a sort of Professions, in particular.*

PART VI.

Of the LAWS that *punish* the Breach of those PUBLICK DUTIES, which all the SUBORDINATE Members of *Civil Society* owe, *directly*, to the GOVERNMENT, or MAGISTRACY itself.

THE LAWS which govern Mens Actions, as they are *indirectly* related to the whole Society, thus considered; we come next to examine the Rules by which they are *directly* subjected to the Magistrate himself, considered as such; which are a Set of Duties essential to the very Existence of all Government, being, in strict Terms, the Correlatives to it.

THESE LAWS take their Rise, indeed, respectively from the several Laws of *civil Dominion*, as delivered in the subsequent Book; and therefore, tho' they are plac'd here, that this Code of *criminal Laws* might be intire and full, yet, as their Reasons cannot be thoroughly understood, till the Laws and Nature of *Magistracy* are known, the Student must suspend his Application to them, till he is, in some Degree at least, acquainted with *those Sources* whence they flow; where they are respectively hinted at, in their Places, as those of the precedent Parts are in the Book of *private Liberties and Rights*.

BUT the fuller Examination of each of them is referr'd hither, both as it is their proper Place, and as we thereby avoid wandering from the principal Business of the other two Books; which, in each of them respectively, is to deliver, *affirmatively*, what Men *may* or *ought* to do, either as *Subjects*, or *subordinate Magistrates*; who, in that respect, are Subjects; while the Consideration of the Laws, and Reasons, for punishing their doing what they *ought not*, are reserved to this Book: In the present Part of which we shall examine the direct Offences to *Magistracy* itself in the following

S E C T I O N S.

- I. Of Subjection to Magistracy, its Nature, Parts and Reasons; with the Offences thereto, in general, either by Subjects or subordinate Magistrates.
- II. Of Offences to judicial Magistracy, or publick Justice, either
 - By private Persons, Litigants, or their Representatives. Where of Nullities for want of due Forms.
 - Of rash Litigation, Forgery, Perjury, Barratry, Concealment, or Composition, of Crimes, &c.
 - By subordinate judicial Magistrates, or their ministerial Officers, &c. where Of Delay, Denial, or Sale of Justice, &c.
 - Of Usurpation of Power, or Jurisdiction, &c.

III. Of Offences to Social Magistracy, and those either
By Subjects; where

Of various Breaches of the Laws of Nations, as Subjects stand obliged to observe them by the municipal Laws of each State, and as each State stands, thereby, obliged to punish or surrender such Offender;

By subordinate Social Magistrates; where

Of Neglect of the appointed Forms of Proceeding, or Neglect of Duty, so far as express Civil Laws declare the Duty of such Officers: together with undue Extent, or Usurpation of Power by them, &c.

IV. Of Offences to Military Magistracy, or the Laws of publick Force, either

By Subjects, who are not Military Persons; where

Of Breaches of the publick Peace, and of Opposition to the publick Force, of all kinds, &c. Or,

By Military Persons; where

Of Neglect of Duty, in Military Persons of all kinds; of, unwarrantable or usurped Exercise of Power by such, &c.

V. Of Offences to the Laws of Fiscal Magistracy, or publick Property of all kinds; and those either

By Subjects;

In Misuse of publick Things; Neglect, or Refusal to pay publick Dues, or Taxes; undue taking, and converting publick Property to private Uses, &c.

By Fiscal Officers; where

Of Neglect of Duty, or undue Extent of Power, in the providing publick Things, or Property, &c.

Of Misapplication, Imbezzlement or Peculation of publick Things, when provided, &c.

VI. Of Offences to the Rules of Legislative Magistracy, either

By Subjects; where

Of false or partial Information given to Legislators, by Persons examined before them, in order to the making or altering of Laws. Note, That other Offences to Legislative Magistracy, being to Laws in general, include the Subject of the whole Book.

By subordinate Legislatures; where

Of Neglect of Duty; Want of due Forms in Proceedings; or undue Extent of Authority; in Magistrates vested with subordinate Legislative Powers of any kind.

VII. Of Offences common to all the preceding kinds of subordinate Magistracy; which,

In Subjects, are the Neglect of that mere personal Reverence and Regard that is due to them.

In Magistrates themselves, are the actual Exercise of the several Offices to which they may happen to be appointed, without such particular Qualifications as are required by Law.

VIII. Of Offences directly to supreme Magistracy itself, whether

More general; where

Of those general Branches of Civil Allegiance, which are neither direct Offences to any of the preceding Parts of Magistracy; nor direct Attacks on the Personal Rights and Dues of the supreme Magistrate: Such as entering into Foreign Service; abetting or aiding foreign Enemies; betraying domestick Councils or Secrets, &c. where of the Crimina Læse Majestatis, or Treasons of this kind.

More particular; where

Of Offences to the personal Rights and Dues of the supreme Magistracy, where ever it is lodg'd: Such as Plots to divest supreme Magistrates of their Offices, or Power, by Violence; or direct Attempts against their Lives, which, in the Case of Princes especially, differ but very little: Together with Offences against Persons nearly related to them, as Wives, Children, Servants, &c. Where of the Crimina Læse Majestatis, or Treasons of this kind.



BOOK IV.
ELEMENTS
OF THE
LAWS
OF
PUBLIC CIVIL DOMINION,
OR
MAGISTRACY,
Usually called the
LAWS *of* GOVERNMENT.

*Sine Imperio, enim, nec domus ulla, nec civitas, nec gens, nec hominum universum genus,
stare, nec rerum natura omnis, nec ipse mundus, potest.* Cic. de Leg. Dial. 3^a

LAW S OF GOVERNMENT.
MAGISTRACY,
OR
PUBLIC CIVIL DOMINION
OF
LAWS
OF THE
ELEMENTS
BOOK IV.

THE IMPERIAL, ROMAN, AND GREEK, AND ROMAN AND GREEK
CIVIL LAW, BY THE LATE J. D. D. D.

INTRODUCTION.

THE two preceding Books of this Work having stated, examined and prov'd, what are those *private Rights* in which Men should be maintained, on one hand, and what are the *publick Duties* to which they ought to be compelled, on the other; the Business of this Book is, to inquire into the *Means* by which, each of those may be, the most effectually perform'd.

WITH respect to which it may be observed, in general, that, as the preceding Laws were Rules which the publick Understanding lays down, *ad extra*, for regulating the Actions of *Subjects*, consider'd as such; so all those of this Book are so many Canons, which it forms, *ad intra*, for its own Conduct, or that of its subordinate Officers; analogous, in some Degree, to those internal and reflexed Acts of the Mind, where it observes, judges of, and lays down Rules for exerting itself justly in, its several Operations.

AND we will therefore, accordingly, make our Enquiry into the Nature and Reasons of these Laws, in a manner something different from what is usual, by considering the several *simple Ends, Functions, or Acts* of Government, *separately*; so far as they may be so separately exercised; and then
examine

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examine their *common Union* in, and Dependence on, the *publick Understanding*, or *supreme Magistracy* itself; which will, I apprehend, state and exhaust the whole Idea of Magistracy very distinctly; and, at the same time, afford us an Opportunity, of reducing the Laws, or Rulers thereto relating, into a more orderly System, than those in which they are frequently delivered; All which will be done in the several following

PARTS OF THIS BOOK.

- I. Of *Publick Civil Dominion*, its Nature, Objects and Parts, in general.
- II. Of the Laws of *Judicial Magistracy*; being those Rules of Publick Dominion, which govern *internal Judicature*.
- III. Of the Laws of *Fecial Magistracy*; being those Rules of Publick Dominion, which govern *external Judicature*.
- IV. Of the Laws of *Military Magistracy*; being those Rules of Publick Dominion, which govern the *Common Force*.
- V. Of the Laws of *Fiscal Magistracy*; being those Rules of Publick Dominion, which govern the *Publick Property*.
- VI. Of the Laws of *Legislative Magistracy*; being those Rules of Publick Dominion, which direct the making all *Publick Rules of Action*, or *Laws* themselves.
- VII. Of the Laws of *subordinate Societies*, as they are a *compound* kind of subordinate civil Magistracy.
- VIII. Of the Laws of *supreme Magistracy*; being those Rules of Publick Dominion, which constitute the Being, and, in part, *direct* the Action, of that *publick Understanding*, which must exercise civil Dominion in the *highest Instance*.

PART I.

Of PUBLICK Civil DOMINION, its *Nature, Objects, Parts* and
Laws, IN GENERAL.

BEFORE we enter into the specifick Detail, of this extensive and most important Part of Civil Laws, it will be very proper to consider their Origin and Nature in general, a little more distinctly than was done in the First Book (a); which will be perform'd in the following

S E C T I O N S.

- I. *Of the several Circumstances of human Nature and Existence, which give Rise to, and make Publick Civil Dominion or Magistracy necessary to Mankind.*
- II. *Of the primary Objects or Ends of Magistracy in general.*
- III. *Of the Necessity for examining and determining Controversies which arise within the Society; whence Judicial Magistracy.*
- IV. *Of the Necessity of examining and judging concerning Wrongs from without, to the Society, or its Members; whence Fecial Magistracy.*
- V. *Of the Necessity of a Force sufficient to execute the Result of those Judgments; whence Military Magistracy.*
- VI. *Of the Necessity for publick Things, or Property, for the performing those and other publick Purposes; whence Fiscal Magistracy.*
- VII. *Of the Necessity for publick standing Rules, as the common Measure and Guide of Actions, both private and publick; whence Legislative Magistracy.*
- VIII. *Of the secondary Ends of Magistracy; whence its Delegations and Subordinations: Where of the Distribution of the Territory of a State into separate Districts and minor Parts, for the distinct Exercise of all the subordinate Offices of Government.*
- IX. *Of the necessary Union of all these Powers, in some one, simple or compound, Understanding and Will; whence Supreme Magistracy.*
- X. *Of the several Characters or Ranks of Men; which, as they are partly the Consequences of private Life, so, they are partly the Foundation of publick Dominion: Where of that celebrated Question, Whether Dominion be, originally, in the Body of the People, as such?*
- XI. *Of the several Qualifications which fit Men for Magistracy, and the various Ways by which they may acquire, or be vested with it, in general.*

(a) Book I. Part XI.

P A R T II.

Of the LAWS of JUDICIAL Magistracy, being those Rules of *Publick Dominion*, which govern INTERNAL JUDICATURE.

FROM the preceding general View of the several *Ends*, or *Means* of *Publick Dominion*, 'tis evident, that we ought *first* to consider the Rules of *Judicial Magistracy*; which is that Part of them, that regulates the Method of examining the Agreement, or Disagreement, of all *particular Actions*, with the *general Rules*, to which they ought to conform, since it is from the Result of those Examinations, that the *Publick Force* must always take its Directions.

IN the earlier Ages of the World, and the Infancy of Civil Societies, before *distinct Laws* were formed, either by Precedent or express Precept, 'tis apparent that this Magistrate was, in one and the same Instance, *Legislator* and *Judge*; having no other Rules but the Understanding of a prudent, and the Conscience of an honest Man: But those, in their most perfect Instances, produced so much Uncertainty and Confusion, as soon induced Mankind to resort to *express Laws* for their Guide, even in the Methods of *Judicial Proceedings* themselves, which, if left unregulated, would often produce Resolves little less erroneous, than the particular Actions concerning which they pretend to determine; and, in some Cases, be more hurtful, as they would add the Weight of *publick Force*, to *private Wrong*.

AND here I must observe, that tho' the *Redress* or Remedies for Injuries, of all Sorts, done to *private Persons*, lie in this Magistrate's Keeping, and are therefore a Part of *Publick Dominion*, yet, it is not unusual, to deliver the Doctrine of *Actions*, or Remedies for such Wrongs, in the Institutes, and as a Part, of *private Law*; which, tho' it may be convenient to lead the Students of *actual Laws* into the ready, and early, Practice of them, seems not so agreeable to the Order of a *rational* and philosophical Inquiry into their Nature and Reasons, in general; which has induced me to reserve them to *this Place*, that the Rules of *Judicial Magistracy* might appear in one Body, unbroken and intire.

THO', in a Head of Law not only of such Extent in itself, but so varied by the different Institutions of *different Nations*, or of the same People, to *different Purposes*, the Reader, instead of a Detail of all its *minute Particulars*, must expect such a *summary View* of its most essential Parts, as is consistent with the Purpose of so general a Discourse as the present. Which will be given in the following

S E C T I O N S.

- I. Of *judicial Magistracy*, its *Ends*, *Objects*, *Parts*, *Kinds* and *Laws*, in general.
- II. Of the Persons vested with *judicial Power*, whether *single Persons*, or *compound Bodies*, and their *ministerial Officers*; the Method by which they may be called to their Office, with their Power, as it is *discretionary* and *legislative*, in the Cases of making Rules and Orders for *judicial Proceedings*, as well as strictly *judicial*.

III. Of

BOOK IV. ELEMENTS OF THE LAWS OF MAGISTRACY. 51

- III. *Of the Nature, and essential Parts of solemn judicial Proceedings, both in general, and as varied by the Objects of Litigation, whether in Private or Publick Pleas.*
- IV. *Of the Parts and Order of solemn judicial Proceedings, as peculiar to the Roman Laws.*
- V. *Of the Parts and Order of solemn judicial Proceedings, according to the Laws of England: Where of the first Matter of Suits, Writs, Appearances, judicial Caution, Prisons, Pleas, Issues, Trials, Evidence, Judgments, Executions, &c. &c.*
- VI. *Of summary judicial Proceedings; their Nature, necessary Parts, and Objects.*
- VII. *Of the various Limitations of this Magistrate's Office, internally, as to the Objects of Litigation: Where of Judges, or Courts restrained to particular Kinds of Pleas; their Nature and Reasons.*
- VIII. *Of the various Kinds of Limitations of this Magistrate's Office, externally, and locally, as to the District, or Territory, thro' which it extends; their Reason, and Laws.*
- IX. *Of Courts of Equity, their Nature and Use, in States where, for the Prevention of arbitrary Proceedings, the ordinary judicial Magistrates, or Judges, are tied down, in their Forms, either to the precise Rules of customary, or the strict Letter of written, Laws.*
- X. *Of unlimited and supreme Judicatories, as to the Nature of the Pleas, Extent of Territory, exact Form of Proceedings, or ultimate Resort, so far as such Powers may be delegated; their Use and Laws.*

PART III.

Of the LAWS of FECIAL Magistracy; being those Rules of Publick Dominion, which govern EXTERNAL JUDICATURE.

THE LAWS of Internal Judicature thus examined, we might proceed to the Consideration of *Military Magistracy*, or that publick Force by which such judicial Proceedings are to be executed; but (as that Force is not confined to Points of *domestick* Debate only, but extends itself also, to the *external* Defence of the Society, or its Members) the Rules of Order make it necessary for us, to state the Idea of that Kind of Magistracy, which is to inquire into, and determine concerning, those *external* Transactions; the which (for want of a better Term) I call in general, *FECIAL Magistracy*; from that Order of Priests, or Heralds, who, among the *Romans*, had generally some Share in the Reception of Ambassadors, the making of Leagues, and declaring War.

'Tis true, their Charge, in *Rome*, extended to little more than the mere Reception of such Ministers, like our *Masters of the Ceremonies*, and to certain religious Sanctions, of Oaths, or Sacrifices, with which Leagues, when formed, were usually accompanied: Whereas by the Term *FECIAL Magistracy*, as used in

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this Work, I understand the *whole* Power of Peace or War; which, necessarily, includes that of receiving Ministers from, or sending them to other States.

THIS Magistracy, tho', from its Nature, it is essentially one, is, however, very various in its several Parts; 'tis merely *ministerial*, as, by Ministers received, or sent Abroad, it observes what is done, or doing, between its own State and others; 'tis *legislative*, as it forms Leagues, or Treaties, for their future Conduct; 'tis *judicial*, as it determines concerning the Agreement, or Disagreement, of particular Transactions, with the Rules to which they should conform; and lastly, 'tis ministerial, judicial, and legislative, all in *one*, where it exerts the publick Force in Acts of *Hostility*, in Affirmance of such Judgments.

FROM which multifarious Nature of this Magistracy 'tis obvious, that but a small Part of it can become the Object of *express* civil Laws; for first, tho' the civil Laws of every State must determine, with *what* Magistrate the Power of War and Peace shall be lodged; yet the exerting that Power, in actual Leagues of Peace, or Acts of War, are Points of *Prudence* only, which depending intirely on the peculiar Circumstances of the Individual *hic* and *nunc*, are, therefore, incapable of *general* Rules: Again, tho' the Magistrate vested with this fecial Power may send, or receive Ministers; yet the Rights and Powers of such, when sent, or received, depend not on *municipal* Laws, but on the *Laws of Nations*; which are to be delivered in the subsequent Book.

So that the bare Point of lodging the Power of War and Peace with *some* supreme Magistrate, together with the Forms of delegating the *adjutory*, or *ministerial* Parts of it, are evidently all the Points of this Part of civil Dominion, that can become Objects of *express* municipal Laws, as such.

WHILE the Execution of its *prudential* Parts are, generally, of such a Nature, as not, safely, to admit of Debate in *popular* Assemblies: And, for that Reason, not only *Democracies*, but well-constituted *Aristocracies* themselves, have generally lodged it with some *one*, or some *few* Persons at most; nor can the contrary be practised, without defeating divers of its most essential Purposes, which require *Secrecy*, and *sudden* Execution; but of that at large in another Place. Here the subordinate Parts of it will be considered in the following

S E C T I O N S.

- I. Of fecial Magistracy, and those Parts of it, which may become the Objects of *express* Civil Laws, in general.
- II. Of the several separate ministerial Officers to whom any of the Parts, or Powers, of this Office may be delegated; and the appointed Forms of such Delegations; as they may become Objects of *express* Civil Laws.
- III. Of the Reception and Entertainment of Foreign Ministers; as it may become a Part of *express* Civil Laws.
- VI. Of Secretaries, Counsellors, or Councils of State, as they may, by Usage, or *express* Laws, become necessary Assistants of supreme fecial Magistracy; but without direct negative Voices, for in such Cases they constitute a Part of it.

P A R T

PART IV.

Of the LAWS of MILITARY *Magistracy*, being those Rules of *Publick Dominion*, which govern the PUBLICK FORCE.

AFTER the preceding Inquiry, into the Nature of *Domestick* and *Foreign* Judicature, the most immediate Object of our Examination is the Nature and Laws of that *Force*, by which their respective Determinations must be executed ; which, though it be not always in *Action*, must always *exist*, and that in such a manner as to lie as *near* as may be within the Reach, and at the *immediate* Command, of the several Magistrates who are impower'd to determine *judicially*, concerning its Use.

'Tis true, that most States have made a Difference between that which is *daily* and *hourly* in Use, for the Inforcement of ordinary *Domestick* Determinations, and that more considerable Power, which becomes occasionally necessary, on *internal* Seditions, or *external* Injuries : Which, tho' it makes an obvious *Difference*, must not make such a *Distinction* as might, by leaving the State without a ready Defence, occasion the *Want* of it oftener than would otherwise happen.

HERE it must likewise be observed, That tho' what is usually called the *civil Sword*, is, from the Nature of its Use, among a well-disciplin'd People in the Times of profound Peace, capable of the precisest Rules ; yet that more *effectual* one, which must be drawn on Occasions of more Moment, cannot receive the Direction of *express* Civil Laws, either in the Manner, or in the particular Instances of that Use.

FOR which Reason, its Government is referred to the prudential Conduct of the *supreme Magistracy*, or that of those *military Societies* mentioned in another Part of this Book ; so that the *Manner*, and *Quantum*, in which it shall constantly exist, together with the Disposal of its Command in the *biggest Instance*, seem to be the principal Points in which it can become the Object of such Rules ; which will be examined in the subsequent

S E C T I O N S.

- I. Of Military Magistracy, its Nature, Objects, Kinds, and Laws, in general.
- II. Of that Kind of publick Force, which is less formally arm'd ; called, by us, the civil Power, or Sword ; its Nature and Laws.
- III. Of the Feudal military Force of the Northern Nations, and our own Tenures ; its Nature and Laws.
- IV. Of that Sort of publick Force, which, by our own Laws, succeeded to the Feudal Plan, called, by us simply, the Militia, or Train'd-Bands ; its Nature and Laws.
- V. Of full and constantly arm'd military Force ; called by us, standing Troops, and by the Romans, Militia Armata.

VI. Of

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- VI. *Of those Institutions of publick Force, which on the most extraordinary Occasions, provide for, and appoint the Manner of, arming the whole Body of the People, that are able to bear Arms.*
- VII. *Of Frontier, and Garrison Towns, Forts, and other Places of Defence; their Nature and Laws.*
- VIII. *Of Naval military Force; its Nature and Laws.*
- IX. *Of the various Delegations of Military Power; so far as it may be delegated.*
- X. *Of the necessary Union of all these, or any of them, in some one supreme Magistracy; in States where many, or all, of them subsist, to prevent the publick Force from falling into Opposition to, and defeating, itself.*

PART V.

Of the LAWS of FISCAL Magistracy; being those Rules of Publick Dominion, which govern the PUBLICK PROPERTY.

NOR are the preceding Provisions, for judging concerning Transactions at home, and abroad; or for instituting a *publick Force*, to execute the Result of such Judgments, sufficient to answer all the Purposes of civil Society; the private Members of which, as well as the publick Officers, stand in need of many things for their common Use, as *publick Ways*, and Passage, both by Land and Water; the *Magistrates* and *Officers*, in particular, both those already mentioned, and those which follow, want a great Variety of things for *publick Buildings*, *publick Utensils*, and consequently *publick Money*, or *Treasure*; for the perpetual Supply of all those Purposes.

I AM very sensible, that, in many States, the Care of providing some of these (such as *publick Ways*, and many *publick Buildings*, being made local and peculiar) is separated from the *Fiscus*, or publick Treasury; but notwithstanding such *peculiar* Appointments, as they depend upon the same Reasons with all the rest, and must, when not otherwise charged, be thereby also provided for, we cannot state the *whole* Idea of fiscal Magistracy, without giving them some Place in the Consideration; and where, whether the providing for them in *that manner*, or *otherwise*, is the most eligible? will be a Part of the Inquiry.

AND here it may be observed, in general, that tho' the *Taxes*, (as they relate to so tender a Point, as that of private Property) are in all well-governed States raised by exprefs standing Laws; yet, are those Laws themselves so variable, so much the Object of Prudence, and the present Situation of Things, that what is a very just and fit Body of fiscal Laws, in one Nation or Society, may not be so, in another.

NAY, they depend so much upon the different Situations of human Life, and Employments, and those, which were the fittest, in one *Century*, may, in the same Society, be not only improper, but almost impracticable, in the next. Of Laws, therefore,

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therefore, which are, in themselves, so temporary, and occasional, the Reader must expect but a general Account, and as general Reasonings concerning them; which will be done in the subsequent

S E C T I O N S.

- I. *Of the several Kinds of publick Necessities, and the different Manners of supplying them; in general.*
- II. *Of the Manner of charging the Execution of civil Offices, as so many Burdens, on the private Fortunes of the Officers themselves; the Cases in which 'tis practicable; with their Convenience and Inconvenience.*
- III. *Of the Manner of defraying the Expence, and Burden, of divers Offices, by Fees, from the Persons who resort to, or have Occasion for, their Assistance.*
- IV. *Of the Manner of supplying all the publick Expences of a State, by publick Property, without charging Offices as a Burden; its good Consequence and Use, in Preference to any other Method; except that of Fees, in some Cases.*
- V. *Of publick Property, in general; whether it be permanent Funds, whence Treasure is derived; or that Treasure itself, in kind.*
- VI. *Of Portions of Land, of which the State, or Prince, is possessed; either immediately, as so many Funds of Treasure for the publick Use; or mediately, on stipulated Terms, for performing certain Offices. Where of the feudal Plan of Property, for public, civil, or military, Purposes.*
- VII. *Of casual Fines, Forfeitures, Escheats, &c. as so many Funds of publick Property.*
- VIII. *Of Taxes on Mens Persons, thrown into different Ranks, according to their supposed Dignity, or Expence, &c.*
- IX. *Of Taxes on the mere Exercise of particular Trades and Employments, with exclusive Rights for their Support.*
- X. *Of Taxes on Mens inconsumable Property, either really so, in Lands, &c. or supposed in Stocks of Money and Goods.*
- XI. *Of those Inland Taxes, on consumable Commodities, which are taken at their first Raising, or further Specification, &c. usually called Excises, with their Laws, Advantages, and Disadvantages.*
- XII. *Of those Port Duties, on consumable Commodities, which are taken at their Entry to, or Exit from, any State, usually called Customs; with their Laws, Advantages, and Disadvantages.*
- XIII. *Of the highest fiscal Magistrate, or Magistracy, so far as it may be delegated; and the Office where all these are received, or accounted for; and whence they are, again, issued, to their several necessary Purposes.*

P A R T

P A R T VI

Of the Laws of LEGISLATIVE MAGISTRACY, being those Rules of *Publick Dominion*, which direct the MAKING all *Publick Rules* of Action, or LAWS themselves.

THE foregoing, more *restrain'd*, Parts of Civil Dominion thus examin'd; we come to the most *universal* of all the separate Acts of Governing, which is *Legislation*; a Power that, of all others, lies the nearest to supreme Magistracy itself: Most of the rest may be, and frequently are, delegated and exercis'd, in many States, almost in their utmost Extent: But where this Power, in its *bighest* Instance, with the *prudential* part of *fecial Magistracy*, are plac'd, there, properly speaking, the *supreme Magistracy* itself resides.

THO', high and extensive as it is, it admits of various *Rules* for its Regulation, especially in the Instances in which it is delegated, some of them *common*, to all Acts of Legislation; and others *peculiar*, to the particular Objects about which it is conversant: 'Tis true, they cannot be called *Laws*, in the proper Sense of the Word, because many of them exist not, in express Terms, among civil Institutions; yet, as they will be put together in this Part, they will contain divers very useful Heads of civil Prudence, which could not find their Places so properly, in any other Part of this Work.

AND this, the Author hopes, will be sufficient Excuse for its Novelty, as a *Head* or Branch of Laws; it being rather, the *universal Art* of making them; which Art, tho' it ought to be known, or understood, before Laws are *actually* made, is, however, among the last things to be considered, in their mere *Theory*; for, as its Rules take their Rise from a Prenotion of the Objects, about which it is conversant, they are found by means of that previous Consideration; nor would their Reasons be understood, tho' deliver'd, till the Mind has been so prepared.

WHICH is the Reason, that, not only here, but, through the whole Work, we have proceeded in an Order, almost, *reversed* to what is usual, in Institutes of Civil Prudence; which, frequently, from a confus'd Idea of *supreme Power*, proceed, gradually, to the Detail of its minutest Objects: A Method very proper for delivering the *actual Fiats* of such Powers, but not so fit for an *Inquiry* into their Reasons. Which Inquiry, with respect to the Rules of Legislation, will be made in the following

S E C T I O N S.

- I. Of *Legislative Magistracy*; its *Reasons*, *Objects*, and *Rules*, in general.
- II. Of the *Objects* of *Laws* in particular, or the *Points* of private, or *publick Life*, which are, or are not, capable of standing general *Rules*.
- III. Of the *Qualifications* which fit Men for this important Charge, in general.
- IV. Of the manner of proposing, and examining the *Fitness* of, *Laws* in general.

V. Of

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- V. *Of the Manner of expressing, and promulgating them in general.*
- VI. *Of the Rules peculiar to Legislation, on the Points of private Rights, and Property.*
- VII. *Of Rules peculiar to Legislation, on the Heads of Criminal Subjection.*
- VIII. *Of Rules particular to Legislation, in the Cases of publick Civil Dominion, or the Laws of Magistracy.*
- IX. *Of the tacit Admission, or express Adoption, of foreign Laws, to particular Places, or certain Purposes, of Civil Society. Where of the express and sufficient Promulgation of the tacit, or positive, Parts of the Law of Nations, in each Society, as a Branch of Civil Laws; its Use and Advantage, for maintaining the mutual Peace of those Societies.*
- X. *Of the Abrogation, Alteration, or Expiration of Laws, either expressly, or tacitly, by Disuse: Where of their Interpretation.*
- IX. *Of subordinate Legislatures; their Constitution, and properest Objects, so far as Legislation may, or ought to be delegated.*

P A R T VII.

Of the LAWS of SUBORDINATE Societies, as they are a COMPOUND Kind of SUBORDINATE Civil Magistracy.

HAVING thus considered the Laws of the *principal Means*, or Instruments of Civil Dominion, so far as they may be *separately and subordinately* exercis'd; we might enter directly on the Consideration of *supreme Magistracy* itself, did not this Sort of *delegated Societies* lie in our way: But, as they bring, in Effect, a kind of *compound subordinate Magistracies*, which, in very extensive, or populous States, are of great, and even necessary Use, we could not rise, by just Degrees, to the full Idea of *supreme Power*, till we had examined their Nature and Laws.

WITHOUT which *subordinate Governments*, the *supreme Magistracy* could not, so well, attend to, or provide for, many of the *minute Circumstances*, to which such inferior Societies reach very effectually.

ESPECIALLY if that *exorbitant Use* of Power, which they are, from time to time, subject to fall into, be kept under a proper *Controul*; as is done, amongst ourselves, by the Court of *King's-Bench*, with respect to our *Corporations*, &c. by the *King in Council*, with respect to our *Plantations*, &c. and by the *King in Parliament*, in respect to them all.

WITH regard to the *Constitution* of which Societies, and the Means of *checking* them, the *supreme Power* cannot well be too exact or cautious; since, without such Care, they may be, in divers Instances, not only so many Seeds of *Faction*; but Heads of *Sedition*, and turbulent *Revolutions*: For, by their legislative, judicial, and other Powers, they hold large-Numbers in immediate *Union*; and, by their *frequent Assemblies*, give their particular *Governors* easy, and frequent, Occasions for acting to *such Purposes*: But of that, at large, in another Place. Their Reasons and Laws will be considered in these

I

SECTIONS.

SECTION S.

- I. Of subordinate Societies, as a Species of compound subordinate Civil Government: *The Ends, or Objects of their Power; with their Constitution, and Laws, in general. Where of Bye Laws, in general.*
- II. Of Societies for the Government of particular mechanick, or mercantile Trades; *that have, within themselves, some Sorts of Legislative, Judicial, and Fiscal Magistracy, for those Purposes: Such as were the Colleges of Artizans, among the Romans; and are our own Guilds and Companies.*
- III. Of Societies for the Purposes of Learning and Knowledge in general; or particular, *having divers such-like Powers, within themselves; of which kind are our Colleges and Universities: Their Use, Nature, and Laws.*
- IV. Of Societies for Military Ends, whether by Land, or Sea; of which Sort are an Army, or a Fleet, govern'd by its General, or Admiral, at the Head of their Council of Officers; for regulating many Parts of Military Discipline, &c. in general; and all military Operations, in particular: *which are too variable, and occasional, to fall under the express Rules of Civil Society. Where of Martial Law, and Courts Martial, &c.*
- V. Of Societies for the limited local Government of particular Towns, having some such-like Powers in themselves; *such as the Roman Municipia, and our own Corporations: With their Uses, Laws, and Limits.*
- VI. Of Societies for Religious Purposes, having certain Legislative, Judicial, and other Powers, within themselves, with respect to the Theory and Practice of Religion: *Their Constitution, Use, Bounds, and Laws, in general.*
- VII. Of subordinate Civil Societies, with the intire Exercise of all Parts of Civil Government; *(except, perhaps, the Feical Powers of War and Peace) but in various Sorts, and Degrees, of Subjection, to the supreme, or subordinate, Magistracies of the dominant State, or Society: Such as were divers of the Roman Colonies, and Provinces, and such are our own Plantations, Ireland, &c.*

PART VIII.

Of the LAWS of SUPREME Magistracy; being those Rules which constitute, or regulate, that PUBLICK UNDERSTANDING, which must exercise ALL Parts of Publick Dominion, in the HIGHEST Instance.

THE several distinct Objects, Ends, or Acts, of Magistracy, with their arising Laws, thus, separately, considered; we come to the highest and most arduous of all Civil Inquiries, which is that concerning Supreme Magistracy itself; being that Body of Rules, by which the Person or Persons, in whom all the preceding Powers

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Powers must be united, are called to the Office, and vested with the Rights, either of *exercising* those Powers, in the highest Instance, where they are not delegated; or of *delegating* them, where such Delegations are fit, and necessary.

BUT (as the *Importance* of this Charge has, not only, divided the *coolest Heads*, but agitated the *warmest Spirits*, of every Age and Nation, more than all the other Parts of Law and Government) 'twill be sufficient to state the several most remarkable *Forms* of supreme Magistracy; with their respective Reasons, Advantages, and Disadvantages, in *general* Terms only: Leaving the rest to be determined by those supreme Powers themselves, as in *Fact* they exist.

WHICH Powers are, perhaps, the only *Umpires* that can decide Debates, wherein *Mens Passions* (both when *in* Power, and when *out* of it) have too great an Influence on their Understandings, to let pure *Reason* have its full Weight, on either Side of the numerous Questions that arise on this Head of Laws: Where, also, we must not forget to observe, that *many* of these Questions are among those Points of Law, which vary according to the Circumstances of the People to whom they relate; and are, therefore, determinable in *probable* and *relative* Terms only.

AND, here, 'tis to be, again, remember'd, that, though the Institution of *some* Supreme Power, is always the *first* Thing to be done, in the *actual* Establishment of any one Civil Society; yet, the Rules of its Establishment, are, in *Theory*, the *last* Point of Consideration: For, 'till we have distinctly examined all the preceding Objects of Law, we can neither determine, what Powers the Supreme Magistracy ought to be vested with, in *general*; nor judge, *comparatively*, of the different Advantages, arising from any proposed Form, in *particular*; because the Difference arises, from their being more or less fitted to answer those Purposes: As the Reader will perceive by the Manner in which they will be considered and compared.

WHICH Consideration and Comparison is not a little necessary, because from this Power, where-ever 'tis lodged, there can lie *no Appeal*, by express Law; for, to whomsoever such Appeal should lie, *there* the Supreme Magistracy would reside; and so on, to an absurd and impracticable *Infinity*: Which, however, has been attempted, by some refining Heads, 'till, in their Schemes, Government, like an unwieldy Machine, is *overloaden*, and *useless*, by the Multiplicity of its own Motions; but of that transiently in this Place: These Laws of Supreme Magistracy will be considered in the following

SECTION S.

I. Of Supreme Magistracy; its Necessity; essential Rights and Powers; and various Forms in general.

II. Of Supreme Magistracy, lodg'd in the Body of the People, which is called, Democracy; whether strictly such, where the whole Body concurs in all great Acts of State, such as making Laws, internally; Peace or War, externally; and conferring Offices for either Purpose; or improperly so, where that Body exerts itself by Colleges of elected Representatives: With their necessary Rights, and Conveniencies.

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- III. Of *Supreme Magistracy* lodged in a *Body of Hereditary Nobility*, which is called an *Aristocracy*; its *necessary Rights*, *Conveniences*, and *Inconveniences*.
- IV. Of *Supreme Magistracy* lodged in *One Person*, whether *absolute*, or with *Control*; *Elective*, or *Hereditary*; usually called *Monarchy*; its *necessary Rights*, *Advantages*, and *Disadvantages*.
- V. Of *divers of the most remarkable Mixtures, Compositions, and Decompositions*, of those three simpler *Forms*; with their *Laws*, *Advantages*, and *Disadvantages*: In a very concise *Manner*.
- VI. Of that particular *Mixture of them all*, which formerly was, and which now seems to be, the *Constitution of the English Government*: Its various *Perfections and Advantages*: Together with a very short *Sketch of the Legislative and Executive Powers*; as thereon, separately, dependent, &c.

A GENERAL REMARK, concerning the Use and Nature of these Elements.

And here, the Reader, if he recollects, will perceive that he has been led, from the simplest Objects of *Private Law*, through a Series of intermediate Deductions, up to this most compound Idea of *Supreme Civil Power*, as it stands upon its general Reasons.

This is, therefore, the Point from which the Student ought to set out, in the direct Study of the actual Laws of any Particular Society; by stating the Constitution and Laws of its *Supreme Power*, and descending thence, through all the Parts of its *Subordinate Magistracy*, its *Criminal Laws*, and its Laws of *Private Rights and Property*, in an Order, almost reversed to that which has been here observ'd, where, I may venture to say, he will find the great Out-lines of all Laws, whatever, which he may fill up with those Particular to any one State, as they stand, partly, on their general Reasons, and, partly, on Maxims peculiar to themselves.

And, from the same Point, if he looks forward, into the general Doctrine of the Law of Nations, as there delivered, he will find the like Out-lines of that Particular Society's Situation, with respect to all the States about it, which may, in like manner, be filled up, with all that is singular to it, in those respects, at any particular Time, &c.

With an Example of which, in a very short Sketch of the Laws of England, as the most general Plan of a little Institute thereof, this Book will be closed; according to what is proposed in Section the VIth, foregoing.

N. B. This Remark is placed here, both as it serves to explain the Author's Idea, of the Use of such a general Discourse as the present; and as it may help the Reader to account for what might, otherwise, seem peculiar; either in the Order, in which the Subjects of it are disposed; or in the Terms, in which they are expressed.

For, as all particular Bodies of Law have, both an Order, and a Language peculiar to themselves, a Discourse concerning Subjects common to all, or most, of them, could not, properly, agree, in those respects, with any one of them in particular.

BOOK

BOOK V.
ELEMENTS
OF THE
LAWS
OF
NATIONAL SOCIETY,
AND
INTERCOURSE,
Usually called the
LAW *of* NATIONS.

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- Inter quos, autem, ratio, inter eosdem recta ratio communis est: quæ cum sit Lex, Lege quoque consociati homines cum Diis putandi sumus.*
—*Parent, autem, huic celesti descriptioni, mentiq; divina, & præpotenti Deo [rationi]: unde, etiam, universus hic mundus, una Civitas, communis, Deorum atq; hominum existimanda sit.*
CICERO, de Legib. Dial. I.
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INTRODUCTION.

IN the three preceding Books, we have particularly examined the Rise, and Reasons, of those Rules, by which the *private social Life* of *one* Body of Mankind is, *internally*, maintained, in *one* Society, by *one* common Force, under the Direction of *one* common Understanding.

AND it appears, from what has been said, both in the First Book, and the latter Part of the preceding, that the whole Species cannot be included in any one such Society: Because no *one* publick Understanding could perceive what was fit to be done; nor no *one* common Force *execute* it, though perceived, beyond certain Limits; which *Limits*, though they have no *precise* Bounds, do yet fall vastly short of the Extent of the *whole Earth*.

THIS Truth, every body perceives, when 'tis expressed in other Terms; for, when we talk of *universal* Monarchy, or *universal* Empire, People, the least acquainted with Civil Government, perceive the Inconvenience of being made a *Province*; that is, of having their Laws *made* by *Persons* too remote, and too little acquainted with their Circumstances to make them *good*; and to have them also, bad as they *would* be,

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be, yet more lamely *executed*, in some Instances; or strained to *tyrannical* Purposes, in others; and that without the Possibility of any timely or sufficient Redress, because of their Distance from the common *Center* of Understanding and Power.

THIS was, what in the earlier Ages of the World, rendered those vast Governments, called *The Four Great Monarchies*, so odious to Mankind; and successively pulled them down: 'Tis these Circumstances, also, which have made the Idea of an *Universal Monarch*, though within the Limits of *Europe* itself, frightful to all her wiser States; and has, justly, given Birth to that Sort of national Policy, which is, now, so well known, under the Style of maintaining the *Balance of Power*.

NOR is the *opposite Extreme*, of confining themselves to too *small* a Compass, less inconvenient; since, how well soever such Restraint may enable the Supreme Magistracy to govern at *Home*, it renders those Societies incapable of Defence *Abroad*; and so exposes them, perpetually, to the Danger of becoming Provinces to greater States; or to suffering more from them, than if they were so.

WHICH, notwithstanding their boasted Plans of Liberty, was the Case of the Commonwealths of *Greece*; and of our own Country, formerly, under its *Heptarchs*: And is still the Case of the *Helvetick Body*, and some of the petty States
of

of *Italy*: The first being rather safe in the *Barrenness*, than the *Strength* of their Mountains; and the latter, whose fertile Fields pay better for their Conquest, are perpetually subject to the Attempts of their *stronger* Neighbours; while their *mutual Jealousies* of each other, make them incapable of *mutual Defence*.

MANKIND being, therefore, thus necessarily divided into many such separate Societies, under these Laws of their Nature, in general; but retaining still the Power of mutually helping, or hurting each other; we come, in the *present Book*, to inquire into the Nature, and Reasons of those *Rules*, by which their *social Life* is extended from Multitude to Multitude; till, by that means, it reaches over all the *habitable Earth*; and holds the *whole Species* to their mutual Duties.

THIS Body of Laws the *Romans* called *Jus Feciale*, from an Order of Priests or Heralds, who, as has been already observed, were therein employed; and is, by some Moderns, called *The Law of Nations*; by others, *The Laws of War and Peace*: Though it seems most properly styl'd *Jus inter Gentes*, and which I, therefore, call *The Laws of National Society and Intercourse*: having reserved their Consideration for the Last Part of this Work, because they are not only, in part, derived from the Laws of Civil Society itself, but are

K

also

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also of a superior and much more extensive Nature : Which
Laws we shall examine in the several subsequent

PARTS OF THIS BOOK.

- I. OF *National* Intercourse, or Society, and the *Law* of Nations, in general.
- II. OF the Laws of Society between Nations, in a State of *Neutrality*, that is, antecedent to express Peace, or direct War, between them.
- III. OF the Laws or Rules of *Acts preparatory* to express peaceful Society between Nations.
- IV. OF the Laws of *private* National Society, by *express Treaty* ; being the Rules of private Intercourse between their Subjects.
- V. OF the Laws of *publick* National Society, by *express Treaty* ; being the Rules of mutual Action between those Bodies themselves.
- VI. OF the Laws of certain *secondary Compacts*, for maintaining Peace, and determining Controversies between Nations, without War.
- VII. OF *War* between Nations, as the *last Remedy* for Wrongs ; and its *Laws*, in general.
- VIII. OF the Laws of the *least solemn* Sort of War ; usually called *Reprisals*.
- IX. OF the Laws of *solemn War*, but in its *tempered* State.
- X. OF the Laws of *solemn War*, in its most *unlimited* and rigorous State.
- XI. OF the Laws or Rules of those *accessory Compacts*, which usually *accompany, suspend, or close* the State of War.

PART I.

OF NATIONAL Intercourse, or Society, and the LAW of
NATIONS, in general.

IN Conformity to the Method hitherto followed, before we enter on a particular Examination of this momentous Body of Laws, we will consider their *Origin, Objects, and Nature*, in general, in the following

SECTIONS.

- I. Of the several Circumstances of human Existence ; which make it necessary for Mankind, to resolve themselves into many different civil Societies, and the Facts by which they are so constituted internally.

II. Of

- II. *Of the external Bounds of such States or Nations ; whether natural, as Seas, Rivers, Mountains, &c. or artificial, as Trenches, Walls, or Boundaries otherwise marked out, together with their adjacent Parts ; in some Cases called Marches.*
- III. *Of the Rights, and Obligations, necessarily resulting from such Separations ; and Wrongs thereto, in general.*
- IV. *Of the several Remedies for such Wrongs ; whether by immediate Treaty between the contending Parties ; the Interposition of natural Umpirage, and Judicature ; or direct hostile Acts, defensive or offensive, and Mens Right thereto, in general.*
- V. *Of the Duration, Interpretation, or Changeableness of these Obligations ; and of the Rules and Laws thereto relating, whether tacit, or express.*

PART II.

Of the *Laws of Society* between NATIONS, in a State of NEUTRALITY ; that is, ANTECEDENT to *express Peace*, or *direct War*, between them.

FROM the preceding *general View* of these Laws, it is obvious, that the *first Object* of our more distinct Inquiry is, concerning that Interourse, which generally has, and must happen, between Nations, while they are in a State of *Neutrality* ; antecedent to *express Peace*, or *direct Hostilities* : Which will therefore be considered in the following

SECTIONS.

- I. *Of the State of Neutrality between Nations, as it arises, internally, from their separate Government ; and, externally, from their natural Boundaries, different Languages, and remote Situations ; its Rights, and Laws, in general.*
- II. *Of private Persons, either single, or in small Numbers, entering the Dominions of other States, for mere Curiosity, or Passage ; with its Consequences.*
- III. *Of private Persons entering, in like manner, for Traffick, or Commerce, and its Consequences.*
- IV. *Of private Persons driven by various Accidents into the Territories of other States ; such as straying, by Land ; and Stress of Weather, or Shipwreck, by Sea ; and its Consequences.*
- V. *Of publick Persons, such as Messengers, Heralds, Embassadors, &c. sent without Permission, for various Purposes, and their Rights. Where of Spies.*

VI. Of Princes in Person entering, or driven by Accident, either sole, with small Retinues, or Multitudes, arm'd or unarm'd, into the Dominions of other States; and their Consequences.

VII. Of the Rights of Nations to prohibit such Entries in general, or to repel, or punish them, in various Ways; without any distinct antecedent Prohibition.

PART III.

Of the LAWS or Rules of Acts PREPARATORY TO EXPRESS peaceful Society between NATIONS.

By what has been said in the preceding Part, it seems evident, that many of the Rights laid down by the Roman Lawyers, with respect to the Freedom of Seas, Shores, Ports, Passages, and Commerce, were in reality, but Claims, made by the stronger, on the weaker, as Occasions for Quarrel and Conquest; being in many Instances, so contrary to the Nature and Safety of Civil Society, that they are justly disputable at least, and therefore dangerous to those who practise them: which has introduc'd the Use of express Contracts, for those Purposes; to which ultimate Regulations, however, certain immediate and preparatory Acts become necessary; the Rules and Laws of which we are now about to consider in the following

SECTIONS.

- I. Of the Necessity, and Nature of Acts preparatory to peaceful National Society, by express Treaty, in general.
- II. Of Heralds, Envoys and Embassadors; their Reception, Rights, and Privileges, when admitted, in general.
- III. Of Persons not only impow'ed to treat of, but to conclude, such Contracts; as Commissaries, Plenipotentiaries, &c. their Rights and Powers. Where of Preliminaries.
- IV. Of Congresses, or mutual Meetings, for such Purposes; whether by Princes in Person, or their authoris'd Ministers; with their Forms and Laws.
- V. Of Contracts between Nations, as the Result of such Negotiations; their Kinds, Forms, Force, and Interpretation in general.

PART IV.

Of the LAWS of PRIVATE National Society, by EXPRESS TREATY; being the Rules of Private Intercourse between their SUBJECTS.

AMONG the National Compacts, which we have above consider'd in general, we will first examine those in particular, which relate to and regulate the private social Life of the Individuals of different States; as they are those for whose sake the more publick ones are, principally, form'd; which will be done in the following

SECTIONS.

S E C T I O N S.

- I. Of *Agreements or Treaties of Peace or Amity, in general Terms only; their Force and Effect, without separate, and distinct Stipulations, of any Kind.*
- II. Of *Contracts for private Commerce; either at large, or to particular and limited Kinds, and Degrees. Where of Tariffs, Customs, Contraband, &c.*
- III. Of *private Contracts between the Subjects of one State, and the Princes or Governors of another, for such-like Purposes.*
- IV. Of *the Laws of Merchants; as they subsist, on general Custom, under the Regulation of such Treaties. Where of Factories, Consuls, &c.*

P A R T V.

Of the LAWS of PUBLICK *National Society*, by EXPRESS TREATY; being the *Rules of mutual Action* between those BODIES themselves.

BESIDES which *private Intercourse*, the *publick social Acts* of whole Societies are most necessarily the Objects of such Agreements, and are indeed the most considerable Part of, what we may call, the *written Law of Nations*: Because, like Contracts between private Persons, or the Statute Laws of Civil Society, they give Birth to a great Variety of more important Duties and Obligations, than arise either from the *Nature of Things*, or old *Usage*: both which are bounded, diversify'd, or enlarg'd, by them, in various ways: All which will be considered in the following

S E C T I O N S.

- I. Of *National Contracts for publick social Acts; their Kinds, Force, Interpretation; and Duration, in general.*
- II. Of *Treaties for stipulated mutual Assistance, defensive, or offensive; to a limited Degree, or with their whole Force; their Kinds, Force and Laws.*
- III. Of *Treaties of Subsidy, on various Conditions; with their Nature and Laws.*
- IV. Of *Contracts of Loan; with their Nature and Laws. Where of National Pledges.*
- V. Of *National Contracts, for the Transfer of Property, or Dominion; analogous to Conveyances between private Men; their Nature and Laws.*
- VI. Of *National Contracts for permanent Union in some of, or all, the Parts of Civil Government; their Nature and Laws.*

P A R T

PART VI.

Of the LAWS of *certain* SECONDARY COMPACTS for *maintaining* PEACE, and *determining* CONTROVERSIES, between NATIONS, without War;

BEING

The Rules of NATIONAL JUDICATURE.

NOR are all the *tacit* Rules of natural Reason, or the *express* Stipulations, which we have hitherto considered, sufficient to hold different Nations to their mutual Duties: For, as, in *Civil Society*, Laws are an uncertain or a dead Letter, without the Interposition of the *judicial Magistrate*, much more do they become so, in the Case of whole Nations; which renders a Resort to some indifferent *Interpreter*, or *Judge*, frequently, necessary between them.

BUT here, 'tis also evident, that the mere *Capacity* of discerning what is Right, and the *Will* to determine accordingly, are not the only Requisites to the Judges, in such Cases: For, as the *Strength* of Nations, too frequently, emboldens them to do Wrong, so, the Sentences of *weak Judges* would have but little Weight; which, in the Case of National Disputes, has introduc'd various kinds of *References*, *Appeals*, &c. to *whole Nations*, or their *prime Magistrates*, in order to adjust them, without the last Resort to *Force*. The several Kinds and Rules of which will be considered in the following

S E C T I O N S.

- I. Of National Judicature, or Judgment between Nations; its Natures, Kinds, and Laws, in general.
- II. Of Mediation between Nations, and the Right of indifferent States to interpose, in such Disputes, voluntarily or unsought; with its Reasons and Laws.
- III. Of Umpirage between Nations, by *express Contract* on both Sides; its Nature and Laws.
- IV. Of sole, or mutual Stipulations, for the Guarantying, or Guardianship of particular Treaties, or Peace, in general; their Nature and Laws.
- V. Of the extensive Scheme of Henry the IVth of France, for erecting a National Judicatory, or Tribunal, for all Europe.

PART

PART VII.

Of WAR between NATIONS, as the *last Remedy* for *Wrongs* ;
and its LAWS, in *general*.

BUT notwithstanding all this Thread of Cautions, for settling the Rights of different Societies, or holding them to their mutual Duties ; the Folly, Pride, or Ambition of particular *Rulers*, or the Madness of *Multitudes*, sometimes *desperate* with Want, and sometimes *drunk* with Luxury, makes the *last Resort*, to publick National Force, too frequently necessary ; for the *repelling*, of present ; the *Redress*, of past ; or the *Prevention*, of future Injuries : Which will be considered, in *general*, in these

SECTIONS.

- I. Of the Necessity and Legality of War, according to the several Circumstances that justify it. Where of that difficult Question, concerning the Prevention of the too great Growth of National Power, by Force.
- II. Of the Persons, or States, that may use this Means of Redress ; it being the different Degrees of Sovereignty, or Subjection, that give, or take away, the Right to it. Which Question is to be understood of offensive War only : For, to the immediate repelling of instant foreign Force, the privatest Persons have an absolute Right ; tho' not to the Pursuit of it, by way of Redress, when once repell'd.
- III. Of the Means of War, or the various Sorts of Hostility, hostile Acts, and Instruments lawful. Where of Stratagems and Deceit, not contrary to particular Compact. Here, however, we are not writing Tactics, or the Art of War, but the moral Rules of using that Art.
- IV. Of the Effects or Consequences of Victory, or being vanquish'd, on the remaining Persons and Things : As to the Change of Property, Acquisition of Sovereignty, or Power of Life and Death, &c. Where concerning the Exaction of Damages.
- V. Of Acts which put an End to War, by Treaty, or Surrender, &c. in general.

PART VIII.

Of the LAWS of the *least solemn* kind of WAR, call'd REPRISALS.

AFTER this general View of a Species of Coercion, which is so inconvenient to, and brings so much Misery, even on those, who, themselves, inflict it ; the Wise and Good will always think, that the *simplest* and most humane Method of Redress, ought *first* to be attempted ; and therefore *first* considered, in particular ; which will be done in the following

SECTIONS.

S E C T I O N S.

- I. *Of the Nature of Reprisals, their Kinds, and Laws, in general.*
- II. *Of the several Offences or Wrongs, which give Right to Reprisals, and for which they may be adequate Remedies.*
- III. *Of the several Kinds and Manners of making Reprisals; Whether on the guilty Persons, where they can be found, only; or on the Guilty and Innocent indifferently.*
- IV. *Of the Effect of such Reprisals, in transferring of Property, giving Power of Life and Death, &c.*

P A R T IX.

Of the LAWS of SOLEMN WAR, but in its TEMPER'D State.

BUT those gentler Methods *failing*, or being, from the Nature of the Offence, *impracticable* with Success, the Injur'd are, sometimes, *compell'd* to let National *Re-sentment* loose in the *solemnest* manner, on a whole People: In which Situation of Things, however, Humanity, and the just Policy, of not making Offenders desperate, have induc'd the more civiliz'd Nations, to hold even this Harpye, herself, with-in *some Bounds*; which we now come to consider, in the subsequent

S E C T I O N S.

- I. *Of solemn War in its temper'd State, in general.*
- II. *Of the Rules which such Temperature gives, to hostile Acts and Instruments.*
- III. *Of the Distinction it makes, between the Arm'd and Unarm'd.*
- IV. *Of the Restraint it lays, as to the Acquisition of private Property; where of Forage, Quartering at Discretion, and Contributions for Subsistence.*
- V. *Of the Moderation it prescribes, as to the Acquisition of publick Dominion, or Empire, and Power of Life and Death, &c. Where of Prisoners of War.*
- VI. *Of the Rules it enjoins, as to Reparation of Damages, and Repayment of Expences.*
- VII. *Of the Regard such a temper'd State of War pays to neuter Nations, in the various ways in which the War may affect them.*

P A R T X.

Of the LAWS of *solemn* WAR, in its *most* UNLIMITED State.

BUT, tho' Reason, and the Nature of Things, prescribe these *Limits* to Devastation, and Destruction, themselves; yet, the Non-observance of such just Rules

BOOK V. ELEMENTS OF THE LAW OF NATIONS. 73

Rules hath, sometimes, added *Desperation to Rage*; and brought on, that last and utmost of human Miseries, *War* in its most *unlimited* Circumstances; which is doing *all the Mischief* that is absolutely in the Power of the contending Parties, either *during* the Contention, or when *one* of them remains Victor: And where, therefore, instead of *Rules*, the Reader must rather expect a *History of Facts*; and a *doubtful Inquiry* into their Reasonableness, and Legality, in the following

SECTION S.

- I. *Of these extremest Acts of Hostility, and whether any, and what Circumstances can make them consistent with Humanity? in general: Where of Reprisals in War, for irregular Acts of Hostility.*
- II. *Of the Use of all imaginable Modes and Circumstances of Annoyance, such as Poisoning of Weapons and Waters, &c.*
- III. *Of Pillaging and Devastations, not for Subsistence, but Punishment, or Prevention, &c.*
- IV. *Of putting Multitudes to the Sword, sacking and burning of Towns, &c. on their being taken by Storm, after what is called unreasonable Resistance. Where of Summons, and fixt Days for Surrenders.*
- V. *Of holding Prisoners in direct and perpetual Slavery.*
- VI. *Of the intire Subversion of private Property, in things moveable and immoveable.*
- VII. *Of assuming Empire on unequal Terms of Subjection; or, leading the Body of a People captive.*
- VIII. *Of the Deletion of whole Nations, or large Parts of them, and Re-peopling.*

PART XI.

Of the *Laws, or Rules*, of those *ACCESSORY COMPACTS*, which accompany, suspend, or close, the State of *WAR*.

BUT during the Progress of these Scenes of Horror, Necessity makes Men tame enough, to look for the Means of moderating, or closing them; which has introduced, and made the following *Compacts* constant Companions, or Followers, of Military Fury; Of which we shall treat in these

SECTION S.

- I. *Of Parlies, for various Purposes; and their Rules.*
- II. *Of Passes and Safeguards, their Kinds and Rules.*
- III. *Of Cessations of Arms, and Truces, for various Purposes, their Nature and Rules.*

L

IV. Of

IV. Of *Treaties, for Exchange of Prisoners, Burying of Dead, &c. with their Rules.*

V. Of *Surrenders on Terms, or at Discretion, either immediate, or future; as the Non-arrival of Relief at a Day certain, &c. their Kinds and Laws.*

VI. Of *Treaties of Peace, or Submission; either absolute, or conditional; as, the Event of a future Battle, or a single Combat, &c. their Nature and Force.*

VII. Of *Hostages, or cautionary Places, for the Performance of Articles, on one, or both Sides, &c. their Kinds and Rights.*

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